

CLIENT ALERT

October 5, 2006

DEPARTMENT OF LABOR CONCLUDES THAT RESPIRATORY THERAPISTS ARE ENTITLED TO OVERTIME

The United States Department of Labor recently concluded that certified respiratory therapists are entitled to overtime for hours worked in excess of 40 hours in a week. Some employers have taken the position that these employees are exempt from overtime based on the nature of their duties and training. However, the Department of Labor concluded that these employees are not exempt from the federal wage and hour law. Therefore, employers are required to pay these employees overtime.

BACKGROUND:

The federal Fair Labor Standards Act ("FLSA") provides that employees are entitled to overtime for work in excess of 40 hours per week unless a specific exemption applies. The most common exemptions are for bona fide executive, administrative, and professional employees. The professional exemption was at issue with regard to the respiratory therapists.

A hospital believed that its respiratory therapists were exempt from overtime based on the educational requirements of the job, and therefore asked the Department of Labor to confirm the exemption. The respiratory therapists at issue were required to possess an active state license in respiratory therapy. In order to obtain the state license, the respiratory therapists were required to be credentialed as Certified Respiratory Therapists through passing the National Board for Respiratory Care Certification Examination for Entry Level Respiratory Therapists. In order to even sit for this exam,



individuals must complete an accredited respiratory therapy educational program, which includes two to four years of specialized instruction leading to either an Associate's Degree or a Bachelor's Degree. In addition to these requirements, the hospital required its respiratory therapists to be certified in basic and advanced cardiac life support, and to continue studying in their field through continuing education programs.

THE DEPARTMENT OF LABOR OPINION:

The Department of Labor applied the federal regulations defining the professional exemption in reaching its conclusion. That exemption requires that the employee 1) receive a salary of not less than \$455 per week, and 2) have the primary duty of performing work that requires advanced knowledge in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction. 29 C.F.R. §541.300. The regulations further define this exemption to be limited to those professions where "prolonged specialized academic training is a standard prerequisite for entrance into the profession." 29 C.F.R. §541.301(d).

Based on the above standard, the Department of Labor concluded that the occupation of respiratory therapist does not require knowledge of an advanced nature that is customarily acquired by a prolonged course of specialized intellectual instruction. The fact that the hospital required its respiratory therapists to be certified was not determinative. Further, the additional training required by the hospital did not change the Department of Labor's conclusion. The Department of Labor found that the position of respiratory therapist is not an occupation where advanced knowledge is "customarily" acquired by a prolonged course of instruction. Therefore, the professional exemption does not apply.

PRACTICAL EFFECT:

The Department of Labor's opinion on this issue is a warning to those employers who employ respiratory therapists. If such employers are not paying respiratory therapists overtime, those employers could face potential liability for unpaid overtime for these employees. That liability can extend back for two years for a violation of the FLSA, and can extend back one additional year if the violation is found to be willful.

QUESTIONS?

If you have any questions regarding the impact of this decision on your organization, please contact Joan Feldman at (860) 251-5104 for any health law related issues.

If you have any labor or employee relations questions, please contact Gabe Jiran at (860) 251-5520. ▲