
Judge to Hospital: Pay Physician Assistant Salary or Pay Overtime

Legal Alert

January 18, 2011

A federal judge in Philadelphia has slapped a local hospital with overtime pay liability for a physician assistant because, even though the "PA" was a professional, the hospital chose to pay him hourly rather than a fixed salary, and that entitled him to overtime pay at the rate of time-and-one-half.

The case is a lesson for healthcare employers that professional employees other than physicians must be paid on a "salary or fee basis" to avoid the duty to pay overtime for hours above 40 per week. If they are paid at an hourly rate, then they must be paid overtime.

In *Cuttic v. Crozer-Chester Medical Center*, decided January 5th, the hospital employed a physician assistant (referred to by the court as a "PA"), Charles Cuttic, whose education and job duties likely qualified him to be "exempt" from overtime pay as a "professional" under state and federal wage and hour laws. However, under the federal Fair Labor Standards Act, to be exempt from overtime pay, an employee must meet two tests: a "job duties test" and a "salary or fee basis" test. In other words, not only must an employee's job duties qualify for a specific exemption from overtime, but the employee must be paid on either a salary basis (fixed amount every week) or a fee basis (a fixed amount for each service rendered). Only three types of professionals - physicians, lawyers and teachers - can be paid hourly or in some way other than a "salary or fee basis," without forfeiting the exemption from overtime pay.

Crozer-Chester argued that the special rule that applies to physicians - and allows them to be paid on an hourly basis or otherwise without losing the overtime exemption - should also cover physician assistants. Federal Judge Eduardo C. Robreno rejected this argument, citing prior court decisions and federal regulations that make clear that the special rule applies only to the "traditional" practice of medicine and not to "other professions which service the medical profession."

So why is this important? Under the Fair Labor Standards Act, the physician assistant - and, by implication, other similarly situated physician extenders -- can now recover two times his unearned overtime pay going back two, and possibly three years, plus his attorneys' fees and costs. If the physician assistant here, who earned \$50 per hour, worked an average of 10 hours of overtime per week, Crozer-Chester could owe him more than \$100,000 in unpaid overtime and liquidated damages, plus the employee's attorneys' fees and costs, not to mention the fees Crozer-Chester has had to pay its own attorneys.

To prevent this from happening at your practice, review how it pays exempt employees, especially physician assistants, registered nurses, and other similar non-physician professionals. First, ensure that the job duties for each such employee warrant treatment as an exempt professional, executive or administrative employee. This may require legal review. Second, ensure that each exempt employee who meets the "job duties" test - other than a physician -- is being paid on a salary or fee basis of at least \$455 per week.

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If your practice is paying such non-physicians on an hourly basis - which is not unusual in healthcare -- then you need to ensure that such employees are receiving pay at time-and-one-half their regular rate for hours that exceed 40 per week.

If such a review reveals problems, or you have other questions relating to this alert, please contact a member of the Healthcare Practice Group or the Labor and Employment Practice Group at Flaster Greenberg PC.