

## Class Action Wage-Hour Suits Filed Against Pennsylvania Hospitals

Philadelphia became ground zero in Fair Labor Standards Act class action litigation this past week when a plaintiff's firm in Rochester, New York filed a series of class action suits against over twenty-five Philadelphia area hospitals in federal district court. The same plaintiff's firm previously filed similar actions in western Pennsylvania, New York and Massachusetts, and some of these class actions have been conditionally certified by the courts. The Philadelphia suits seek millions of dollars in damages and will be the source of very costly litigation for the hospitals at a time that they least need additional expense and challenge to capital funds.

The suits are nearly identical and allege violations of the FLSA, ERISA and RICO. (A copy of the complaint against Temple University Health System, which is representative of all the class complaints, can be accessed at [this link](#).) Basically, the suits address the following issues:

- requiring or allowing employees to work during unpaid meal periods without compensation;
- requiring or allowing employees to work before and after scheduled shifts without compensation; and
- requiring employees to attend training time without compensation.

The complaints also include a novel ERISA claim arising out of the FLSA violations. The assertion is that because the employer has failed to properly calculate wages for compensation purposes, then employer contributions to defined benefit pension, 401(k) and 403(b) plans are based on erroneous wage information. So far, at least one court, the United States District Court for the Eastern District of Michigan, has rejected such a claim, but it appears the plaintiff's bar intends to fight district by district to try to find recovery under this theory.

Now more than ever it is necessary to review and audit all of your payroll practices and policies, particularly in the area of unpaid break periods, preliminary and postliminary work activity, and training time, to ensure that you are in compliance with the FLSA.

If you would like to discuss the class action litigation or would like additional information about the review and audit of payroll practice and policies, please feel free to contact any member of Post & Schell's national Employment & Employee Relations Group.

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