

Philadelphia Court of Common Pleas Holds "8 and 80" Overtime System Violates Pennsylvania Minimum Wage Act

A Philadelphia Court of Common Pleas trial judge recently granted summary judgment in favor of the plaintiff class and against the defendant hospital holding that the hospital's adherence to the Fair Labor Standards Act ("FLSA") authorized "8 and 80" overtime system violates the Pennsylvania Minimum Wage Act ("PMWA"), 43 P.S. § 333.101 *et seq.* The PMWA mandates that employees who work in excess of 40 hours in a given workweek be paid overtime. *Turner v. Mercy Health System*, Nos. 03670 & 5155 (Phila. Ct. Com. Pl. Mar. 10, 2010). This is the first reported decision addressing the interplay of the FLSA-permitted "8 and 80" overtime system with the PMWA "40 hours" overtime requirement.

Section 7(j) of the FLSA expressly permits hospitals and other health care institutions "primarily engaged in the care of the sick, the aged, or the mentally ill" to use the "8 and 80" overtime system. These special overtime rules may be used by hospitals and residential care establishments to calculate overtime for their non-exempt workforce. The "8 and 80" system requires the health care institution to reach agreement or an understanding with its employees before work is performed that the "8 and 80" system will be used to calculate overtime. If such agreement or understanding is in place, the "8 and 80" system permits the health care institution to pay its non-exempt employees one and one-half times their regular rate for all hours worked in excess of 8 in a workday and 80 in a fourteen-day period. The FLSA does, however, permit health care institutions to use the "8 and 80" system for some employees and the "40 hours" system for others.

The *Turner* court has brought the applicability of this federally sanctioned, well-established practice into question - at least in Philadelphia County. In granting summary judgment in plaintiffs' favor, the trial court held that the PMWA and its interpreting regulations require all employers - including health care institutions - to pay their employees overtime wages for any hours worked in excess of 40 during a seven consecutive day period. The trial court further found that Section 7(j) of the FLSA does not preempt the PMWA overtime requirements.

The trial court's decision is neither binding nor precedential inside or outside Philadelphia County. Nevertheless, Pennsylvania health care employers should review and audit payroll practices and policies and assess potential exposure as a rash of "copy cat" wage and hour class action lawsuits challenging the "8 and 80" rule under the PMWA are likely, particularly in Philadelphia and adjacent counties.

If you have questions 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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