

Federal Wage and Hour Labor Laws May Confuse Healthcare Employers, *Healthcare Risk Management*, ft. Keith Gutstein and Taylor Ferris

Keith Gutstein, Co-Managing Partner in the Long Island office of Kaufman Dolowich & Voluck, LLP and Co-Chair of the KD's Labor & Employment Law practice group, and Taylor Ferris, Attorney in the KD Long Island Office were quoted in Healthcare Risk Management's article on FLSA and healthcare workers - June 1, 2019.

Healthcare employers are especially at risk of violating the Fair Labor Standards Act. Many practices common in the industry could violate the law.

- *Clinicians may be incentivized to work longer hours than the amount for which they are paid.*
- *Meal breaks are a high-risk area and automatic payroll deductions can lead to violations.*
- *Home healthcare workers are subject to different rules that may pose compliance challenges.*

By the nature of the work in the industry, healthcare employers can find it challenging to comply with the Fair Labor Standards Act (FLSA), the law that regulates fair compensation for working hours and other workforce limitations. There is a complex list of requirements, made even more difficult by state and local labor laws.

Factor in State and Local Laws

Like most employers, healthcare employers face not only challenges with FLSA compliance, but also with state and local wage and hour laws, notes Keith J. Gutstein, JD, co-managing partner of the Woodbury, NY, office of the law firm Kaufman Dolowich Voluck.

For example, the FLSA mandates that nonexempt employees be paid overtime premium pay for hours worked in excess of 40, and that certain documentation, such as time records, be maintained for employees, he says. States have the same requirements, if not more.

"For instance, New York State requires that certain employees be paid 'spread of hours' pay if their day exceeds 10 hours, and mandates that each employee in New York State have a notice of wage rates as required by the New York State Labor Law," Gutstein says. "Certain healthcare employees may be unaware of these rules and regulations, which may lead to significant financial liability."

For example, Gutstein explains, it is not uncommon for physicians to start a practice and pay little to no attention to compliance with applicable employment laws. In such situations, a physician may hire an employee, then hire another, and before the physician realizes, the practice is a thriving business with numerous employees on payroll, he says. While some statutes, like Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, and the Age Discrimination in Employment Act, have a requisite number of employees for the laws to apply, the FLSA and its requirements will apply regardless of the number of employees, Gutstein explains.

"Additionally, it is not uncommon for doctors' offices to have extended hours one or multiple evenings during the week to accommodate their patients. In such situations, the extended hours would put a normal 9-to-5 employee over the 40-hour threshold," Gutstein says. "Physicians also may be inclined to compensate their employees on a salary basis and not require their employees to punch in or punch out at the start and end of their shifts."

A common mistake that doctors' offices make is compensating nonexempt employees on a salary basis and opting not to track those nonexempt salaried employees' hours, says Taylor M. Ferris, JD, an attorney with Kaufman Dolowich Voluck in Woodbury, NY.

Another common issue that arises in physicians' offices is when a nonexempt employee decides to go into work early or stay late to finish their work. These situations can ultimately create exposure for physicians, she says.

The most important thing risk managers can do to reduce the risk of FLSA violations is to educate themselves on the law and the requirements, Gutstein says.

"Risk managers should also keep and maintain records of employees' hours worked, as well as properly classify their employees as exempt or nonexempt. Risk managers should also be mindful of the intricacies of the New York Labor Law, including the spread of hours requirement, as well as the wage notice and wage statement requirements," he says. "It is also beneficial to review your hiring and compensation policies and update them if necessary."