



LATSHA DAVIS YOHE
& MCKENNA, P.C.
ATTORNEYS AT LAW

PLEASE REPLY TO: Mechanicsburg
WRITER'S E-MAIL: athomas@ldylaw.com
gdavis@ldylaw.com
djameson@ldylaw.com

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**CLIENT ALERT – PHILADELPHIA COURT OF COMMON PLEAS HOLDS “8 and 80”
OVERTIME METHOD VIOLATES PA MINIMUM WAGE ACT**

Dear Client:

A recent case out of the Philadelphia Court of Common Pleas is calling into question whether Pennsylvania health care institutions can rely on the “8/80” method of overtime calculation available under the Federal Fair Labor Standards Act (“FLSA”), or if the “8/80” method violates the Pennsylvania Minimum Wage Act (“PMWA”). In Turner v. Mercy Health System (Phila. Ct. Com. Pl. Mar. 10, 2010) the court held that the PMWA mandates that employees who work in excess of 40 hours in a given workweek be paid overtime. This is the first reported decision addressing the relationship between the federal “8/80” overtime method and the PMWA “40 hours” overtime requirement.

Under Section 207(j) of the FLSA, as an alternative to the standard requirement to pay overtime to employees for hours worked in excess of 40 per workweek, hospitals, nursing homes, homes for the aged and certain other medical institutions who provide residential care are permitted to pay their non-exempt employees one and one-half times their regular rate for all hours worked in excess of eight (8) in a workday and 80 in a 14-day period. The “8/80” method requires the health care institution to reach agreement or an understanding with its employees before work is performed under which the “8/80” method will be used to calculate overtime.

The Turner court held that because the PMWA does not explicitly provide for the “8/80” overtime payment method, and because the FLSA does not preempt Pennsylvania law from requiring that all employees, including health care workers, be paid overtime for hours worked in excess of 40 in a single workweek, the “8/80” method is not an available option under Pennsylvania wage and hour laws. Accordingly, the court concluded that health care employers in Pennsylvania may not rely on the FLSA’s “8/80” method when calculating overtime obligations to nonexempt employees.

The court’s decision is neither binding nor precedential in Pennsylvania, outside of Philadelphia County. Additionally, legislation is pending in the General Assembly which would permit use of the 8/80 method by PA health care institutions. Nevertheless, Pennsylvania health care employers should review and audit their payroll practices and policies and assess potential exposure as this

1700 Bent Creek Boulevard, Suite 140 ● Mechanicsburg, PA 17050 ● (717) 620-2424 ● FAX (717) 620-2444

350 Eagleview Boulevard, Suite 100 ● Exton, PA 19341 ● (610) 524-8454 ● FAX (610) 524-9383

3000 Atrium Way, Suite 251 ● Mt. Laurel, NJ 08054 ● (856) 231-5351 ● FAX (856) 231-5341

Maryland Telephone: (410) 727-2810

Client Alert – FLSA 8/80 Overtime Method Called Into Question

August 13, 2010

Page 2

decision will undoubtedly initiate a flood of “copycat” wage and hour class action lawsuits challenging the “8/80” method under the PMWA.

If you require any assistance in reviewing and/or auditing your payroll policies and procedures or with any other employment law issues, please do not hesitate to contact us.

Sincerely,



Angela L. Thomas



Glenn R. Davis



Daniel R. Jameson

The information herein reflects the views of the author. The information should be construed as general guidelines and not interpreted as legal advice.