# DOL Targets Healthcare Employer For Violations

Insights
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A recent announcement from the U.S. Labor Department's Wage and Hour Division highlights the risks that healthcare employers face when they do not properly compensate employees for overtime hours and do not maintain accurate records. In May, DOL announced that Extended Health Care, Inc. of Downey, California had agreed to pay more than $654,000 in back wages to 108 current and former registered nurses and licensed vocational nurses. The settlement culminated a multi-year DOL investigation that began in 2009. The company, which provides skilled nursing care to patients in their homes, also committed to comply with the Fair Labor Standards Act (FLSA) in the future.

In this case, the company committed several FLSA violations, including failing to maintain required timekeeping records, misclassifying employees, and failing to make mandatory payroll withholdings. Perhaps most significantly, the company also failed to properly pay overtime to employees. According to the DOL, the company paid certain employees only "straight time" for hours worked in excess of 40 per workweek, rather than time and one-half their regular rate for overtime hours.

DOL has also implied that the company misapplied the "8 and 80" rule, set forth under section 7(j) of the FLSA, although it has not publicly identified a precise violation of the rule. Under section 7(j), hospitals and residential care establishments may use a fixed work period of fourteen consecutive days, instead of the 40-hour workweek, for purposes of computing overtime. The "8 and 80" rule allows covered employers to pay one and one-half times the employee's regular rate for all hours worked in excess of 8 in a workday or 80 in a 14-day period, whichever is greater.

The DOL's announcement is just the latest example of an increasing trend of enforcement action by the agency. It represents an example of the consequences of incorrect wage and hour policies. Employers should use the announcement as a reminder to ensure that their method of computing overtime payments is compliant **both** with the FLSA and any applicable state law.

The "8 and 80" rule itself underscores the confusion that employers can experience when confronted with an apparent conflict in federal and state wage and hour laws. While the FLSA permits the "8 and 80" method of computing overtime payments for qualifying employers, state law may not.

For example, a Philadelphia Court found in 2010 that a hospital system violated Pennsylvania's

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Minimum Wage Act by calculating employees' overtime payments based on the "8 and 80" rule because, according to that court, state law did not provide for that method of overtime calculation. Employers must therefore remember that compliance with the FLSA does not necessarily translate into compliance with state law. To be fully compliant, you must review the requirements of both.

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