

# ARE UTILIZATION REVIEW NURSES ENTITLED TO OVERTIME? PENDING FEDERAL CASE SHOULD SERVE AS WARNING FOR HEALTHCARE PROVIDERS

Insights  
Mar 31, 2022

Healthcare organizations across the country should train their attention on a federal court case pending in Georgia that deals squarely with whether RNs performing utilization review (UR) work are exempt from overtime pay requirements. Depending on where your organization is located – and the specific work being done by the RNs in question – the answer is not always clear-cut. Indeed, it is a fact-sensitive inquiry that demands analysis of federal and state law, which do not always align. While still in its early stages, the *Baker v. Anthem Companies* case should remind healthcare employers to be thoughtful about how you classify and compensate your UR staff.

## The ABCs of UR Work

Medical insurers, hospitals, and other healthcare providers regularly rely on utilization review (UR), or medical necessity reviews, as part of their core operations. The UR process ensures appropriate levels of care are provided to patients, in the right setting. It also helps ensure that medical resources are used appropriately. It is also critical work because it ensures that the care is covered and paid for by an insurer or other payors such as Medicare or Medicaid. Utilization reviews occur through the care continuum, typically governed by preset guidelines. In many instances, nurses perform these reviews.

A question that may not receive enough attention in your organization is whether your RNs performing these reviews are exempt from overtime pay requirements established by federal or local law. To pass this test under federal law, the

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employee must also receive a weekly salary of at least \$684, which may not vary based on the number of hours worked. Some states have established higher thresholds to qualify for exempt status. Further, a salaried employee's classification as exempt from overtime also hinges on the duties being performed – and this is where the trouble lies when it comes to UR work.

### **The *Baker* Case Should Serve as a Warning**

Deon Baker worked as a nurse for the Anthem Companies from 2015 and 2018. She filed suit in November 2021 in a federal court in the Northern District of Georgia on behalf of herself and other nurses who performed utilization reviews in an Anthem office or from home. Baker alleges that she and other nurses received fixed salaries, worked unreported hours, and their primary job duties were “non-exempt work consisting of reviewing medical authorization requests submitted by healthcare providers against *pre-determined guidelines and criteria* for insurance coverage and payment purposes.” According to Baker, she and other nurses routinely worked more than 40 hours in a workweek and therefore entitled to be paid overtime time under the Fair Labor Standards Act (FLSA).

Last month, Baker filed a motion in court asking the judge to grant her conditional certification of an FLSA collective action. If granted, the court would allow Baker to pursue her FLSA unpaid overtime claim on behalf of a group. The FLSA permits single plaintiffs to bring claims on a collective basis if they can show there exists a group of “similarly situated” employees. Despite having different job titles, Baker argues that she and other utilization review nurses performed the same primary job duties (utilization review work) and were subject to the same compensation scheme (fixed salaries with no overtime pay). Baker has further argued that any differences between the putative collective members should be addressed and resolved upon completion of discovery – which means the employer would have to slog through months of expensive and protracted litigation before determining whether the collective action should be permitted to move forward.

When Baker filed her motion, the putative collective consisted of roughly 13 nurses. If the court grants the motion – and there is a chance that it will – Baker will be permitted to send notices to other members of the putative collective. This could dramatically increase the number of

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nurses joining her action and, by extension, Anthem's potential exposure in the case. Federal district courts in Minnesota and Tennessee have already conditionally certified collectives of utilization review nurses against Anthem based on comparable allegations.

### **What Will the Court Look at Before Making its Ruling?**

Ultimately, the key fact-specific question will be whether these nurses' duties require them to exercise discretion and judgment during the UR process or whether they are simply following pre-set criteria that does not require them to exercise the discretion and judgment that is associated with the duties of a registered nurse. Courts have long held that RNs involved in direct patient care, including those with less than a four-year degree, may qualify for the "learned professional" exemption under the FLSA. Practical nurses, on the other hand, are very unlikely to qualify for this exemption.

Both courts and the U.S. Department of Labor also recognize, however, that neither having an RN designation nor a particular job title standing alone is sufficient to fulfill this requirement. The decisive consideration, regardless of the individual's job title or even their level of formal training, is whether the individual is actually *exercising* discretion and independent judgment in performing their duties.

Thus, even within the same department, it is possible that one UR nurse could qualify for an exemption from overtime while another one does not, depending upon the degree of discretion that each nurse applies. RNs in utilization review who apply their professional judgment to make decisions in gray areas will qualify for an exemption. Those who simply adhere to established protocols will not.

### **What Should Healthcare Employers with Utilization Review Teams Do?**

Healthcare employers should therefore remain mindful that despite the temptation to do otherwise, they must verify that employees classified as exempt indeed meet the required independent judgment and discretion criteria. As is apparent from the *Baker* case, a single plaintiff asserting a wage and hour claim can greatly expand potential liability by pursuing a claim on a collective basis.

Healthcare employers with utilization review teams should consider conducting audits and reviewing each employee's compensation and duties, with an eye to the requirements of the particular jurisdiction in which each employee works. By doing so, you can confirm your compliance or take the appropriate corrective steps to minimize the risk of litigation.

We will monitor the situation and provide updates as developments occur, so make sure you are subscribed to [Fisher Phillips' Insight system](#) to get the most up-to-date information. If you have further questions, contact your Fisher Phillips attorney, the authors of this Insight, or any attorney in our [Healthcare Industry Team](#).