

# NURSING FACILITIES ORDERED TO PAY \$36M IN OVERTIME SUIT: 10 WAGE AND HOUR TIPS FOR HEALTHCARE EMPLOYERS

Insights  
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A group of nursing facilities in Pennsylvania was recently ordered to pay a whopping \$36 million in overtime pay and damages to workers who claimed their employers deliberately paid them less than they actually earned. After an investigation by the US. Department of Labor (DOL), a federal district court found that the operators of 15 facilities willfully denied thousands of employees overtime pay. The agency says the massive award is “one of the nation’s largest wage recovery judgments,” and highlights the importance of wage and hour compliance in the healthcare industry – which often has unique compensation issues. Here’s what you need to know about the lawsuit and a 10-step plan to avoid the same fate.

## What Happened?

**Wage and Hour investigation:** This case focuses on a group of residential skilled nursing, rehabilitation, and assisted living facilities in western Pennsylvania. The DOL had conducted a wage and hour investigation and found that the employers violated the Fair Labor Standards Act (FLSA) for years by:

- Willfully failing to pay employees for all hours worked, including work done during meal breaks
- Failing to incorporate all promised compensation — including non-discretionary bonuses and shift differentials — when calculating overtime pay

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- Misclassifying employees as exempt to avoid paying overtime premiums
- Failing to keep accurate records of hours worked and compensation due

**Court Sides with DOL:** After failing to resolve the matter directly with the employers, the DOL filed a lawsuit in 2018. Ultimately, in a July 22 judgment, the U.S. District Court for the Western District of Pennsylvania awarded \$35.8 million in overtime pay and liquidated damages to 6,000 workers.

**DOL Affirms Enforcement Commitment:** Solicitor of Labor Seema Nanda said the result “shows our unwavering commitment to enforcing the employee protections in the Fair Labor Standards Act and ensuring employers fulfill their obligation to comply with the law.”

**Impact:** What does this ruling mean for employers in the healthcare industry? Healthcare employers have long faced scrutiny from the DOL based on compensation issues that are unique to the industry. But you can stay ahead of the curve by taking the following 10 practical steps to reduce your risk and keep compliant with federal, state, and local wage and hour rules.

## Your 10-Step Compliance Plan

**1. Ensure Overtime is Properly Calculated.** As noted in this case, failing to include all applicable compensation in overtime calculations is a hot issue for non-exempt workers in healthcare. Under the FLSA, non-exempt workers must be paid 1.5 times their “regular rate of pay” for all hours worked beyond 40 in a workweek. While the “regular rate” excludes some compensation — such as health insurance and certain paid time off and discretionary bonuses — it includes many other forms of pay, including non-discretionary bonuses and shift differentials, as well as on-call, longevity, hero, and hazard pay. Failing to include these forms of pay in the regular rate can lead to claims of unpaid overtime.

**2. Beware of Interrupting Breaks.** The DOL also found in this case that workers were not paid for tasks performed during their meal breaks. As you know, the nature of healthcare work makes it hard for employees to get a chance to sit down, which makes it critical for you to ensure non-exempt workers aren't performing work when breaks are unpaid. Additionally, some states — such as California, Colorado,

and New York — have specific laws on meal and rest breaks. So, you should ensure you are following the rules in your jurisdictions. Moreover, auto-deducting time for meal breaks could be problematic because you may need to prove employees took those breaks. Thus, it's a good practice to have employees clock in and out for unpaid breaks.

**3. Avoid Wage and Hour Misclassification.** The DOL recently increased the salary threshold for employees to be exempt from overtime pay under the executive, administrative, and professional exemptions — which are collectively known as the “white-collar” exemptions. One hike already took effect on July 1 and the other is slated for January 1. [You can read more about this major development here.](#) In addition to reviewing the salary level for employees who are classified as exempt from overtime pay under the FLSA, you should also ensure they meet the appropriate “duties test.” Moreover, you’ll want to check state and local rules, which may be more stringent than federal law.

**4. Pay for Travel During Shifts.** Many healthcare workers travel during their shift from client to client or facility to facility — and that time is generally compensable. You’ll need to ensure employees are paid for such time and that overtime pay is also calculated accordingly. You should note, however, that the time an employee spends commuting from home to the first worksite of the day and back home at the end of the day generally is not compensable, unless, in certain circumstances, the employee performs additional work before leaving for the worksite or after arriving home. If employees perform work before commuting to the first worksite or after arriving home — such as charting, making scheduling calls, or attending an interdisciplinary meeting — they may be entitled to compensation for the commute times. Note that this is a complicated analysis that depends on the specifics of the situation.

**5. Pay for Time Spent in Training and Meetings.** Time spent at work for the benefit of the employer is compensable. This includes time employees spend onboarding and in training sessions and meetings. Be sure that all work time is captured appropriately for non-exempt employees when they are engaged in these activities — and be sure to train managers on proper timekeeping for such workers.

**6. Review Independent Contractor Classifications for Compliance.** Employers may be tempted to designate

healthcare workers as independent contractors rather than employees, but simply providing an IRS Form 1099 to workers (instead of a W-4) doesn't mean they are properly classified as independent contractors. You should review the [new DOL rule that took effect in March](#) making it harder to classify workers as independent contractors under the FLSA. You should also note that some states, such as California, Massachusetts, and New Jersey, have stricter rules than federal law when it comes to independent contractor classification. It's a good idea to review your current worker classifications to ensure they are compliant with the latest rules in your jurisdiction.

#### **7. Don't Retaliate Against Workers for Bringing Complaints.**

Notably, Solicitor of Labor Seema Nanda has said that one of her top priorities is "combatting retaliation through robust enforcement." Therefore, you should ensure your managers know that it's unlawful to fire an employee or take other adverse action against them because they complained about a perceived workplace violation.

**8. Be Prepared for a DOL Investigation.** The Department has identified healthcare as a "low wage, high violation" industry, making it more likely for employers in the industry to face investigations. You should understand that the DOL has the legal authority to investigate your wage and hour practices. The government could request that you promptly produce payroll and timeclock records, employee contact information, information concerning employee exemption classifications, 1099 forms, job descriptions, and other documents. The government has the power to subpoena your records and to issue subpoenas commanding the testimony under oath of owners and managers. You'll want to conclude a DOL audit as quickly and favorably as possible — and the best way to do that is to cooperate with reasonable requests and try to get to the heart of the matter and demonstrate compliance. Gather documents immediately and put your best foot forward.

**9. Seek Experienced Legal Counsel.** When issues surface, you'll want to engage legal counsel early so you have an attorney who is well versed in wage and hour law to help you through the process and quickly address any potential issues. Moreover, there are many benefits to preparing for an audit under the protection of the attorney-client privilege.

**10. Track wage and hour developments in the Healthcare Industry** by subscribing to [Fisher Phillips' Insight System](#).

## Conclusion

If you have further questions, contact your Fisher Phillips attorney, the authors of this Insight, any attorney on our [Healthcare Industry Team](#), or in our [Wage and Hour Practice Group](#).