

# WAGE AND HOUR OFFICIALS FOCUS ON HEALTHCARE EMPLOYERS IN SOUTHEASTERN U.S. – 5 TIPS TO AVOID TROUBLE

Insights  
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Federal wage and hour officials have trained their attention on healthcare employers in the Southeastern United States – and we expect this scrutiny to continue into the new year. The past year alone saw the Department of Labor’s Wage and Hour Division conduct nearly 400 investigations and recover more than \$4.1 million in back wages and liquidated damages for over 2,000 care employees in the southeast. What are some steps you can take to make sure you avoid such problems and stay up to speed with wage and hour compliance in 2025?

## Some Quick Background

The Wage and Hour Division is continuing an initiative focusing on investigating the healthcare industry, including residential care facilities, nursing facilities, and home health providers, for violations of the Fair Labor Standards Act (FLSA). The initiative targets nationwide violations but has particularly focused on healthcare employers in the Southeastern United States.

Most recently, the Wage and Hour Division announced it had recovered more than \$114,000 in civil money penalties – beyond the amount of back wages and liquidated damages – for fiscal year 2024. The DOL’s efforts include making presentations to educate employers and employees about wage and hour laws and how they apply to the healthcare industry in particular. Recent press releases also highlight the misclassification of home care workers as independent contractors and unpaid overtime by an assisted living facility.

## Related People



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The monetary amounts and enforcement efforts are significant and a good reminder for employers to remain cognizant of their obligations under the FLSA. In particular, healthcare employers in Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee, should remain vigilant as the initiative appears to be focused on those states more than others.

## 5 Steps Healthcare Employers Can Take

Here are five things to do when evaluating your pay practices to avoid becoming part of the initiative's wage recovery statistics.

**1. Ensure Overtime is Properly Calculated.** Some of the most common violations uncovered by the initiative were failures to pay overtime or federal minimum wages. 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. This seems simple enough, but healthcare employers frequently run into trouble figuring out the regular rate of pay. This figure is calculated using the hourly wage paid to an employee but also includes other forms of pay such as non-discretionary bonuses and shift differentials, as well as on-call, longevity, hero, and hazard pay. All too often these types of pay are excluded, which can lead to an unpaid overtime claim.

**2. Review Independent Contractor Classifications.** Providing a 1099 and a contract that states a worker is an independent contractor does not automatically make that so. Both federal and state laws apply strict tests to determine proper classification that frequently focus heavily on the worker's degree of independence and the nature of the work they perform. This has been a major focus of the initiative and also a hotly contested issue for employers of nursing staff, as well as one of the legal areas that remains in some flux over the past few administrations.

**3. Understand the Difference Between Exempt and Non-Exempt.** Similarly, just because an employer designates an employee as exempt from overtime – even where an employee agrees to this classification – does not mean the employee is *actually* exempt. No matter the title or contract terms, employees must still meet certain criteria to be exempt from overtime. The failure to properly classify employees as exempt or non-exempt can have lasting impact and increase legal exposure. Because of this, it is

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important to regularly review all of your exempt employees' roles to make sure they are properly classified. This review should look at the job description and, more importantly, what the role actually entails in a typical workday. As a part of this review, if you find that a type of employee is performing tasks that are outside of the current job description, you should update that description to more accurately reflect the roles and responsibilities of that position.

**4. Make sure you are paying for compensable activities.** All time that non-exempt employees spend at work for the benefit of their employer is generally compensable. This includes not just time providing care, but also includes time spent onboarding, in training sessions and meetings, traveling during shifts, donning and doffing protective wear, and interrupted breaks. Be sure all non-exempt employee work time is captured by providing trainings and ensuring managers are up to date on proper timekeeping for these types of workers.

**5. Be Prepared for a DOL investigation.** The DOL is not required to provide employers with advance notice of an investigation. The agency frequently initiates unannounced site visits to observe normal business activities and request access to records. This requires employers to be prepared to promptly produce payroll and timekeeping records, employee contact information, exemption classifications, job descriptions, 1099 forms, and other documents. You should make sure that you are maintaining these materials so that they are complete and can be provided quickly. DOL investigations can be time-intensive and disrupt your usual business. Preparing in advance and letting your on-site managers know what to do in the event of a site visit are key. Additionally, the best way to be prepared for this is to conduct regular and periodic internal reviews of employment records and policies to make sure you are in compliance with the FLSA. You should conduct internal reviews with the assistance of counsel and typically include a review of exempt employee classifications, independent contractor classifications, payroll and time records, and leave law compliance.

## **Conclusion**

We will continue to monitor wage and hour developments and provide updates, 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 on our [Healthcare Industry Team](#) or in our [Wage and Hour Practice Group](#).