

Nurses and Overtime Pay: Who is Eligible? Who is Exempt?

By ***Lee Levin, Partner***

For our clients who employ nurses, the question arises on occasion as to whether employed nurses are to be considered exempt employees for purposes of the minimum wage and overtime pay requirements of the Fair Labor Standards Act (“FLSA”). We have never had an instance when a client questioned whether a nurse was required to be paid the minimum wage, but from time to time, the question has arisen with respect to their eligibility to receive overtime pay.

Under the FLSA, there are three (3) primary categories of employees who are considered exempt from overtime pay requirements. Those exemptions are for executive, administrative and professional employees. On occasion, an employer could have a nurse employee who fits into the executive or administrative exemption (e.g. a nurse who supervises other nurses), but historically, the question has been whether a nurse fits into the learned professional exemption.

To qualify for the learned professional exemption, all of the following tests must be met:

1. The employee must be compensated on a salary or a fee basis at a rate set by the Department of Labor (“DOL”) on a per week standard (discussed below).
2. The employee’s primary duty must be the performance of work requiring “advanced knowledge.” The DOL defines this as work that is predominantly intellectual in character and includes work requiring the consistent exercise of discretion and judgment.
3. The advanced knowledge must be in a field of science or learning.
4. The advanced knowledge must be customarily acquired by a prolonged course of specialized intellectual instruction.

The DOL historically had indicated that registered nurses who were registered by an appropriate state examining board and who were paid at least the minimum weekly rate would be classified as exempt, but licensed practical nurses (“LPNs”) generally did not qualify as exempt learned professionals regardless of work experience and training. This was due to the DOL’s belief that LPNs did not need to acquire a specialized advance academic degree in order to be an LPN and, as such, would be eligible for overtime pay. However, effective January 1, 2015, the Department of Labor reversed its position and recognized that LPNs could be exempt if they met the other requirements necessary to be eligible for exempt status.

Even if all nurses are characterized as learned professionals, one of the other factors in determining whether a nurse is eligible to be classified as exempt is whether they are making a certain designated minimum salary. Until November 30, 2016 that salary was set at \$455 per week. Effective December 1, 2016 that salary threshold increases to \$913 per week (\$47,476 annually).

Therefore, if you employ a nurse and you pay them less than \$913 per week, they will still be eligible for overtime. The DOL estimates that this increase in the salary requirement could make an additional four million employees eligible for overtime. If you pay your nurses more than this amount per week, it is highly likely that they will be characterized as exempt.

If you have any other questions regarding this topic, please contact one of the listed Roetzel attorneys below.

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