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CLIENT ALERT

Wage and Hour Suits Against Health Care Employers on the Rise

In response to recent statistics showing a proliferation of wage and hour lawsuits over the past few years, published reports predict that the health care industry will be the latest target for plaintiffs' attorneys seeking to initiate collective and class action wage and hour claims. Specifically, while the number of new wage and hour lawsuits filed each year rose 40 percent between 2004 and 2007, the most noticeable increase in wage and hour suits in the past year and a half was against large hospitals in the Northeastern United States. Employment lawyers expect this trend to continue and to extend to other health care institutions.

Health care employers are particularly attractive defendants. First, most of the hospitals involved in recent wage and hour litigation are located in major metropolitan areas, as a large workforce can result in a class of hundreds or even thousands of plaintiffs. Second, while hospitals strive to comply with the Fair Labor Standards Act ("FLSA") and applicable state laws, many lawsuits have focused on particular issues that arise when day-to-day practices, such as meal break policies, in a particular hospital unit may differ from the hospital's general or stated policy.

Recent wage and hour suits are typically collective actions under the FLSA, although plaintiffs sometimes add analogous state labor law claims. The relative ease with which plaintiffs can gain conditional class certification under the FLSA, as well as the availability of attorneys' fees and liquidated damages for prevailing parties, are additional factors contributing to the proliferation of wage and hour litigation.

Health care employers should prepare to face litigation and take steps to mitigate liability for potential wage and hour actions, including a comprehensive review of their wage and hour practices and records. A comprehensive review would include ensuring that all exempt and non-exempt employees are properly classified and paid; that appropriate policies are in place for compensation due to interruptions in meal periods or

incidental time spent providing report at shift change; that managers are trained on FLSA-compliant practices; and that a robust complaint mechanism allows employees to report alleged violations of those policies without retaliation. We are available to assist you in these matters.

If you should have any questions regarding the recent trend in wage and hour litigation, in conducting a wage and hour compliance review, or any other related issues, please contact us.

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