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Challenge to 12-Hour Shift Pay Practice Defeated in Significant Class Action Lawsuit Before the Ninth Circuit U.S. Court of Appeal

Sheppard Mullin partner Douglas Hart achieved a major victory for employers everywhere when the U.S. Court of Appeal for the Ninth Circuit issued its long-awaited decision in the class action lawsuit entitled Parth v. Pomona Valley Hospital Medical Center on October 22, 2009. The Ninth Circuit ruled as a matter of first impression that it is permissible for an employer to reduce pay rates to achieve cost neutrality under the Fair Labor Standards Act ("FLSA") in conjunction with the implementation of a 12-hour shift program. This decision, issued in one of the most significant wage and hour cases to reach the U.S. Court of Appeal in years, is likely to be widely cited in other cases against California hospitals and should greatly benefit the entire health care industry.

Nearly 20 years ago, the Hospital implemented a 12-hour shift program in response to market demand and employee requests. Under the pay practice, nurses assigned to 12-hour job classifications were paid a lower base hourly wage rate than nurses assigned to 8-hour job classifications such that, after daily overtime was paid to the nurses working 12-hour shifts, the "take home" earnings remained roughly equivalent. Plaintiff Louise Parth voted in favor of the pay practice and entered into a voluntary agreement to have her wage rate reduced in connection with working 12-hour shifts. The pay practice was later ratified in a collective bargaining agreement when the Hospital's nurses unionized in 2003.

Pomona Valley has been one of many hospitals to come under attack in a rash of recent class action lawsuits challenging the legality of the now industry standard pay practice under federal and state overtime law. Like the plaintiffs in other cases, Parth argued that (1) it is impermissible for an employer to reduce hourly pay rates after the FLSA became effective; (2) it is unlawful to pay different rates to employees who perform the same work but on shifts of different lengths; and (3) pay plans that include rate reductions and different rates for 12-hour and 8-hour employees constitute an "artifice" to avoid paying overtime and a "subterfuge" that offends the purpose of the overtime rules.

The Ninth Circuit resoundingly rejected all of these arguments and upheld the pay practice. Focusing on the practical reality that the nurses desired the 12-hour shift schedule and agreed to the pay practice in the first place, the Court labeled the Hospital's conduct "perfectly reasonable." The Court noted that the purpose of the FLSA is to ensure that employees receive "[a] fair day's pay for a fair day's work." The pay practice does not contravene the Act's purpose because nurses who work more than eight hours per day receive time-and-one-half the regular rate, and double-time when they work longer than 12 hours in a day. Thus, the Court reasoned, the nurses were

protected "from the evils of overwork and underpay" and the Hospital did not have an incentive to require the nurses to work longer hours. Moreover, there was no evidence that the range of rates for nurses assigned to 12-hour job classifications was artificially low or that the Hospital was attempting to set rates in a manner that would relieve it of the obligation to pay overtime.