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## *In wage disputes, compliance is the best defense*

**E**mployers face an epidemic of wage-and-hour class actions and government investigations as law firms and the Department of Labor target the health-care industry.

Health-care providers are facing multimillion-dollar penalties and judgments for a range of payroll violations. Many legal and human resource professionals in the industry identify wage-and-hour actions as the primary area of employment-related risk.

There are several preventative steps health-care providers can take to help ward off wage-and-hour actions.

Vigilantly monitoring compliance with federal and state wage-and-hour laws is critical. Employers must ensure that all employees understand and follow wage-and-hour requirements, and that managers are well trained in taking proactive measures to identify and correct any potential violations as they arise.

The existence of a compliance-training program may significantly reduce damage awards.

Employers should also audit and update their timekeeping systems to make sure that they accurately record employees' actual work and break times. Federal and state wage-and-hour laws generally require employers to prove their compliance with documentation, so accurate data are vital.

### Low-hanging fruit

Wage-and-hour class actions targeting health-care providers jumped nearly 40 percent between 2008 and 2009, and are on track to double once again this year. The reasons for the increase are no mystery.

### LABOR LAW



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Health-care providers are especially susceptible to wage-and-hour lawsuits these days because health care is one of the few segments continuing to grow in the current economy.

Additionally, the urgent nature of the health-care industry lends itself to potential infractions, such as when nurses interrupt their off-the-clock meal

break to respond to a patient or resident emergency.

And because employers' timekeeping systems may not be wired to accurately handle the idiosyncrasies of health-care work, technical violations are often not hard to find, drawing the attention of potential plaintiffs and government investigators.

The epidemic of wage-and-hour suits in the health-care industry began three years ago against several large hospitals whose timekeeping systems applied automatic 30-minute pay deductions for meal periods. As law firms began to recognize the potential, they began soliciting plaintiffs in health-care facilities across the nation.

The resulting uptick in wage-and-hour actions recently prompted the Obama administration to add nearly 300 wage-and-hour investigators in the Department of Labor – an increase of more than 30 percent – specifically targeting health-care providers.

### Work time

So far, the largest number of lawsuits concern “off-the-clock” claims – such as the claim that employers automatically deduct 30-minute meal breaks.

Similar allegations concern improper

rounding, unpaid travel time, unpaid training time, unpaid work time before and after regular shifts, misclassification of employees, miscalculation of overtime, failure to maintain accurate records and breach of contract.

A startling recent development concerns court decisions allowing actions under the Racketeer Influenced and Corrupt Organizations Act (“RICO”), a traditional claim against white collar criminals and organized crime. RICO claims assert that health-care providers underpaid their employees as part of an intentional scheme. RICO violations can carry fines double the amount levied for Fair Labor Standards Act infractions.

Proactive measures can discourage class-action suits from even being filed and – through a show of good-faith policies and procedures – can greatly lower the amount of any damage awards or penalties levied against an employer.

Employers should regularly ask employees about any trouble they have in accurately recording their time. Performing a comprehensive payroll-compliance audit can detect vulnerabilities, especially in off-the-clock trouble areas such as meal breaks, rounding, travel time and work done before or after regular shifts. If your system cannot accurately record actual work time and correct any variances – such as an interrupted meal break – it's time to overhaul the timekeeping system. Training from the ground up remains one of the most critical proactive actions that an employer can take.

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