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# Pay Practices in Health Care Are Investigated

By ROBERT PEAR

WASHINGTON — The Obama administration is investigating pay practices throughout the health care industry after finding that many hospitals and nursing homes do not pay proper overtime to nurses and other employees who work more than 40 hours a week.

Hospitals around the country have paid millions of dollars in back wages to settle claims by the government and their employees. And many more hospitals are fighting class-action lawsuits that raise the same issues.

In St. Louis, the Labor Department has recovered more than \$1.7 million in back wages for 4,000 employees of hospitals and clinics operated by SSM Health Care, a Roman Catholic system.

In Boston, the Partners HealthCare System agreed to pay 700 employees more than \$2.7 million in overtime back wages to resolve a lawsuit by the department alleging violations of the Fair Labor Standards Act.

And under the proposed settlement of a class-action lawsuit in California, Kaiser Permanente would pay \$7.25 million to hundreds of registered nurse coordinators, case managers and other medical workers. The employees said they had been denied overtime pay because they were improperly classified as exempt. Kaiser denied wrongdoing but has agreed to the settlement.

Drinker Biddle & Reath, a national law firm based in Philadelphia, recently sent a bulletin to clients with this message: “Health Care Providers Beware! Your Wage/Hour Practices Are Under Scrutiny.”

The Labor Department has hired 250 new wage-and-hour investigators, representing a staff increase of one-third. The government wants to make sure workers get “every penny they earn,” said Kenneth Stripling, a Labor Department official leading enforcement efforts in Birmingham, Ala.

In New York, the department said, fewer than 36 percent of health care employers investigated by its Albany office were in compliance with the federal wage-and-hour law.

In Connecticut and Rhode Island, the department is investigating residential health care facilities. In Alabama and Mississippi, federal investigators are focusing on assisted-living and group homes.

Nursing assistants, licensed practical nurses, janitors and cooks “are particularly vulnerable to wage violations,” Mr. Stripling said.

In many cases, employees say they were not paid for work performed during meal breaks.

“Most nurses put the patient first,” said Charles D. Boal, a registered nurse who worked in the critical care unit of The Western Pennsylvania Hospital in Monroeville, near Pittsburgh.

“We often gave up lunch breaks to see that a patient was taken care of properly,” he said. “If you brought your lunch from home or got food in the cafeteria and took it to the nursing unit, you would be interrupted by phone calls, by physicians and family members who wanted to talk to you. We really did not have an uninterrupted meal break.”

Daniel T. Laurent, a spokesman for the hospital, declined to comment.

Labor Department regulations say, “Bona fide meal periods are not work time,” and employers do not have to pay for them. But, they say, an hourly employee “must be completely relieved from duty” during a bona fide meal period.

“It is the duty of the management to exercise its control and see that the work is not performed” if the employer does not intend to pay for it, the rules say.

In some cases, workers and the government say, hospitals automatically reduce an employee’s pay by the equivalent of 30 minutes per shift, on the assumption that the worker has taken a meal break, even when the employee missed it or was interrupted.

Catherine M. Gordon, a nurse at Buffalo General Hospital in New York, said that “chronic understaffing” increased the risk of wage-and-hour violations.

Ms. Gordon is a plaintiff in a lawsuit against Kaleida Health, a network that includes Buffalo General. “Going into health care, we know that we will have to work some weekends and holidays and night shifts,” Ms. Gordon said. “But often we don’t get our meal break.”

Michael P. Hughes, a spokesman for Kaleida Health, one of the largest employers in western New York, said, “We believe this is a frivolous lawsuit.”

In other cases, the Labor Department has found that hospitals failed to pay hourly employees for work before or after their scheduled shifts, and that home care agencies did not pay employees for time spent in travel between patients’ homes.

J. Nelson Thomas, a founder of a Rochester law firm that represents health care workers in class-action lawsuits around the country, said: “Hospitals take advantage of the good instincts of

employees, knowing they will put the patient first. Some hospitals have cheated employees out of millions of dollars.”

His firm, Thomas & Solomon, has a Web site devoted to the issue.

The Fair Labor Standards Act generally requires that employees be paid at least the federal minimum wage of \$7.25 an hour, as well as one-and-a-half times their regular rates of pay for hours worked beyond 40 a week.

Partners HealthCare, in Boston, contacted the Labor Department after realizing that some affiliates might have violated the law. Employees often worked at more than one Partners hospital or clinic in the same week, but the company did not combine the hours worked at different sites to determine if overtime was due.

The University of Pittsburgh Medical Center is vigorously defending itself in a lawsuit filed by Mr. Thomas’s firm on behalf of hourly employees.

“Class-action lawsuits benefit the lawyers, not the consumers,” said Paul C. Wood, a spokesman for the medical center. The lawyers are often paid more than any plaintiffs, he added.

The Greater New York Hospital Association recently held a labor law seminar for its members and encouraged them to check their compliance with federal requirements.

“Hospitals are complicated organizations, and record-keeping for employees is astronomically complicated,” said Kenneth E. Raske, the president of the association. “Workers cannot just drop patient care when the lunch hour arrives. We are not like an assembly line, which can shut down at lunchtime, or a bank, where people work 9 to 5.”

**\*Prior results do not guarantee similar outcomes.**

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MARSHALL FOR THE NEW YORK TIMES

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