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Law firm files suit against hospitals

Catholic Health and Kaleida Health targets of action

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NEWS BUSINESS REPORTER

A Rochester employment law firm filed class-action lawsuits Thursday against Kaleida Health and Catholic Health System, accusing the health-care giants of violating federal and state law by not paying hourly employees for lunch or meal periods that were interrupted or missed.

The suit, filed in U.S. District Court by Dolin, Thomas and Solomon LLP, claims the two hospital systems have policies to automatically deduct the time for meal periods from employees' pay, even if workers didn't receive their full time off and should have been paid.

That's against federal and state labor laws, the firm says, citing a recent bulletin from the U.S. Department of Labor aimed at the healthcare industry.

The two hospital systems said they had not yet been served with court papers, but were familiar with the firm and suit, and roundly denounced both.

"This is obviously a self-serving effort by an out-of-town law firm intent on exploiting our hard-working employees," said Michael P. Hughes, Kaleida spokesman. "Unfortunately, this law firm has a track record of this type of activity in other communities such as Rochester. Our commitment to our employees is unquestionable and we will vigorously defend ourselves against this lawsuit."

Catholic Health spokesman Dennis McCarthy said the firm had been "soliciting our employees and former employees for months to join this lawsuit." He said the hospital has policies "to ensure that

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722 have signed on as plaintiffs

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employees are properly paid for all time worked, including overtime."

"Such a claim is utterly meritless and will be vigorously defended against," he said. "CHS will not permit this lawsuit to disrupt its commitment to provide exceptional healthcare."

Under federal law, meal periods are typically at least 30 minutes in duration, are not considered worktime, and do not have to be paid. However, the law specifically says employees must be "completely relieved from duty for the purposes of eating regular meals," and says workers are not considered "relieved" if they are "required to perform any duties, whether active or inactive, while eating."

"The law is clear that employers must compensate employees for all hours worked," said attorney J. Nelson Thomas, who represents over 700 current and former employees who

have joined the lawsuit. "Catholic [Health] and Kaleida cannot be allowed to circumvent the Department of Labor's regulations."

The Labor Department bulletin says employers are responsible for ensuring workers take their 30-minute breaks without interruption if they don't pay the employees for that time. And if employees are interrupted frequently, such as by patient requests, the employees should be paid for the full period.

Violations are common in healthcare, Thomas said, because of the nature of the work. "Nurses are dedicated and they don't just drop patients to take lunch," Thomas said.

So after hearing of the issue, the law firm posted a Web site to attract clients. It won a settlement in a similar case in 2006 against University of Rochester.

To date, 389 Kaleida employees and 333 at Catholic Health have signed on as plaintiffs, but the firm is seeking more current and former em-

ployees, and expects as many as 10,000 may be affected. Thomas said total damages could exceed \$10 million.

Federal law allows workers to recover lost wages for three years, but New York law allows six years if the court agrees to allow the state claim. Only hourly workers are covered.

Thomas said the law firm also investigated Erie County Medical Center, but found it complies with the law by paying all employees for meal breaks, whether they take them or not.

The firm is still investigating practices at eight other hospitals or systems in New York State, including Roswell Park Cancer Institute, Niagara Falls Memorial Medical Center, Mount St. Mary's Hospital and Health Center, Sheehan Memorial Hospital, the McGuire Group, the VA Healthcare Systems, Ascension Health and Catholic Health East.

*Prior results are not a guarantee of future results.