

NURSES OVERTIME ALERT!

Many nurses, including registered nurses (“RNs”) and licensed practical nurses (“LPNs,”) are eligible to earn overtime compensation for hours worked over forty per week. If you are working as an RN or LPN, your employer may be inadvertently assuming you are not entitled to overtime pay. If you work more than forty hours a week, you may want to consider contacting Burr & Smith to determine whether you are eligible for overtime compensation.

New regulations governing entitlement to overtime wages are tentatively scheduled to take effect August 23, 2004. These regulations confirm that LPNs do not fall within the “professional” exemption. Thus, they are entitled to overtime pay for hours over forty per week.

RNs who are registered by the appropriate State examining board generally are exempt from eligibility for overtime pay under the “learned professional” exemption. However, this exemption only applies if they are compensated “on a salary or fee basis at a rate of not less than \$170 per week...” 29 C.F.R. § 541.311.¹ Nurses whose compensation changes from week to week in accordance with their hours worked are not paid on a “salary” or “fee” basis. Therefore, their work does not come within the definition of bona fide executive, administrative or professional, employees.² See, Elwell v. University Hos. Home Care Serv., 276 F.3d at 832 (6th Cir. 2002) (nurses paid under a

¹ Under the new regulations which may be effective August 2004, this exemption will only apply to RNs compensated on a salary or fee basis at a rate not less than \$455 per week, (or \$380 per week if employed in American Samoa by employer other than the federal government), exclusive of board, lodging, or other facilities. Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Computer and Outside Sales Employees, 69 Fed.Reg. 22,260 (2004) (to be codified at 29 C.F.R. § 541.301(e)(2)).

² See, 29 C.F.R. § 541.1 (executive exemption) and 29 C.F.R. § 541.2 (administrative exemption).

hybrid compensation plan, which combined both fee based and hourly compensation, were not professionals exempt from overtime requirements); Brock v. Superior Care, Inc., 840 F.2d 1054, 1061 (2d Cir. 1988) (nurses do not come within the definition of a bona fide professional employee when they are paid on an hourly basis). Such nursing professionals may be entitled to time and one half their regular rate of pay for each hour worked over forty per week.

If you are not receiving overtime compensation for hours over forty per week but you think you may be entitled to it, we invite you to contact Burr & Smith for a individual consultation and review of the specific circumstances surrounding your compensation.