

Fair Labor Standards: Court Says Nurse Practitioners Do Get Overtime.

The US District Court for the Eastern District of Texas has ruled that nurse practitioners who are paid on an hourly rather than salaried basis are entitled to overtime pay for hours worked in excess of forty hours per week, under the US Fair Labor Standards Act.

However, the District Court will not enter enforcement of its ruling until there has been an opportunity for an appeal to the US Circuit Court of Appeals. The District Court recognizes its opinion could be overruled and that an authoritative ruling from the Circuit Court, one way or the other, will promote the long-range goal of a final resolution of this question.

The Fair Labor Standards Act contains an exception, dating back to the 1940's, for physicians engaged in the practice of medicine. Even if paid on an hourly rather than salaried basis, physicians do not qualify for overtime.

It is hard to see how, in the 1940's, Congress could have meant for that to apply to nurse practitioners.

UNITED STATES DISTRICT COURT
TEXAS
January 13, 2005

The court sees hourly nurse practitioners more akin to nurses than to physicians. Hourly-paid nurses get overtime. The court acknowledged at the same time that nurse practitioners perform many functions traditionally done by physicians. ***Belt v. Emcare Inc.***, __ F. Supp. 2d __, 2005 WL 66903 (E.D. Tex., January 13, 2005).

Door Alarms Not Functioning: Court Approves License Revocation.

The Supreme Court of Alabama overturned the decision of a lower court to overrule the state Department of Public Safety's revocation of an assisted-living facility's license to operate.

The Department was correct in its determination that inoperative door alarms present an unacceptable safety hazard to the elderly Alzheimer's patients who resided in the facility.

Situations where cognitively impaired residents leave a facility without knowledge of the facility's personnel are termed elopements.

Prevention of elopement comes within the scope of regulations which require assisted-living facilities to provide residents with necessary assistance with activities of daily living and assistance with personal safety.

SUPREME COURT OF ALABAMA
January 14, 2005

Elopement is very dangerous, possibly deadly, because these residents no longer have the mental capacity to recognize dangers from exposure to weather, moving vehicular traffic and open bodies of water, the court pointed out.

Staff at a facility are expected to know as soon as any resident attempts to exit the facility so that they can intervene and redirect the resident and prevent the resident from wandering away. ***Dept. of Public Health v. Wynnwood Personal Care Home***, 2005 WL 78763 (Ala., January 14, 2005).

Defamation: Employee Can Sue Over Theft Allegations.

A nursing home administrator fired the admissions coordinator for alleged theft of property from the facility.

She sued for defamation because statements concerning her termination for theft were placed in her personnel file to be read by corporate management.

The nursing home administrator apparently ignored a letter faxed to the facility, to the attention of the admissions coordinator, from the deceased resident's niece, stating that it had been the resident's intent for her to take any of the resident's furniture or give it to other staff.

The administrator instead believed only what the resident's son said about the resident's intent to donate her furniture and clothing to the facility for the benefit of the other residents.

Theft is a serious allegation. An employee wrongfully accused of theft can sue for defamation, even if the allegations of theft have only gone so far as the employee's personnel file.

The employer can defend itself even if the defamatory statement was untrue, if the employer can convince the court there was a thorough investigation and there were good-faith grounds to believe it was true.

APPELLATE COURT OF CONNECTICUT
January 18, 2005

The case points out the necessity for thorough investigation of the grounds for termination of any employee and for thorough documentation of the investigation. ***Gambardella v. Apple Health Care, Inc.***, __ A. 2d __, 2005 WL 67125 (Conn. App., January 18, 2005).