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Half an Hour for Healthcare

Helpful Hints for Healthcare Companies on California Wage & Hour Issues

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Why a Healthcare Series?



How Healthcare Providers Are Different

- Operate 24/7
- Subject to nurse-patient staffing ratios
- Usually, large potential classes
- Lots of licensed, certified and registered employees
- Potentially, hundreds of different classifications
- Potentially, hundreds of different pay codes
- Complex pay systems with lots of differentials and special premiums

Why a Healthcare Series?



- Many commercial timekeeping and payroll systems are challenged by the complexities of the hospital setting
- Exempt status of certain classifications limited by statute (RNs and Pharmacists)
- Workflow changes quickly and often
- Many employees are on-call
- Employees often sent home early
- Work many different AWS schedules
- Employees float between units
- CBA exemptions apply only to overtime and paid sick leave
- Special overtime rules that apply to some employees
- Special meal waiver rules that apply to some employees
- Many unions, some with contracts with unlawful provisions
- Joint employer issues
- Home health pay structures

Today's Agenda

Employee Classification

- Exempt Status
- Joint Employment
- Union Represented Employees

The Question:

Exempt Status

- Traditional exempt status test
 - Salary threshold (2x minimum wage for full-time employment)
 - Duties test (administrative; executive; professional)
 - Qualitative and quantitative element

The Boards - Question 1



Seattle Grace Hospital would like to classify mid-level providers and physical therapy staff as exempt.

Which of the following employees will not qualify for the professional exemption?

- A. Nurse Midwives
- B. Nurse Anesthetists
- C. Physician Assistants
- D. Physical Therapists
- E. Physical Therapist Aides
- F. Nurse Practitioners
- G. Clinical Nurse Specialists

The Question:

Exempt Status

- Healthcare Hints – Nurses and Pharmacists
 - Registered Nurses and Pharmacists
 - Not exempt, unless ...
 - Advanced Practice Nurses exemption
 - Nursing managers and the 50% rule
 - Extra pay for extra shifts

The Question:

Exempt Status

- Healthcare Hints – Physicians
 - Hourly paid physician exemption
 - Labor Code section 515.6
 - Currently \$97.99 for each hour worked
 - Does not apply to interns or residents or physicians covered by a CBA
 - Physicians paid daily rates
 - Day rates permissible as long as total compensation equals or exceeds salary basis – i.e., \$64,480

The Question:

Joint Employment

- Important issue for healthcare industry because of use of staffing agencies; nurse registries; traveler agencies; etc.
- Also arises in the context of healthcare systems
- *Martinez v. Combs*, 49 Cal. 4th 35 (2010). An entity will be considered an “employer” if the entity:
 - exercises control over wages, hours, or working conditions;
 - suffers or permits the worker to work; or
 - engages the employee to work under the common-law test of employment
- Right to control may be sufficient, whether or not actually exercised

The Question:

Joint Employment

- Horizontal Joint Employment
 - 2005 DOL Opinion Letter finding joint employment by related hospitals:
 - Sharing a common President and Board of Directors;
 - One entity periodically provided administrative support to other;
 - Having the same personnel policies at the same facility;
 - Joint employment even though each entity had its own HR department, employee handbook, payroll system, pay scales, retirement plan, and tax ID
 - Labor Code section 2810.3
 - “Client employers” jointly liable with a labor contractor for payment of wages for workers supplied by contractor

The Question:

What Does a Finding of Joint Employment Mean?

- Joint responsibility for wage-hour compliance:
 - Accurate pay, including overtime
 - Meal and rest period compliance
 - Alternative work schedules
 - Wage statements
 - Final pay?
 - Leaves of absence
 - Notices and recordkeeping

The Question:

Avoiding Joint Employment Liability

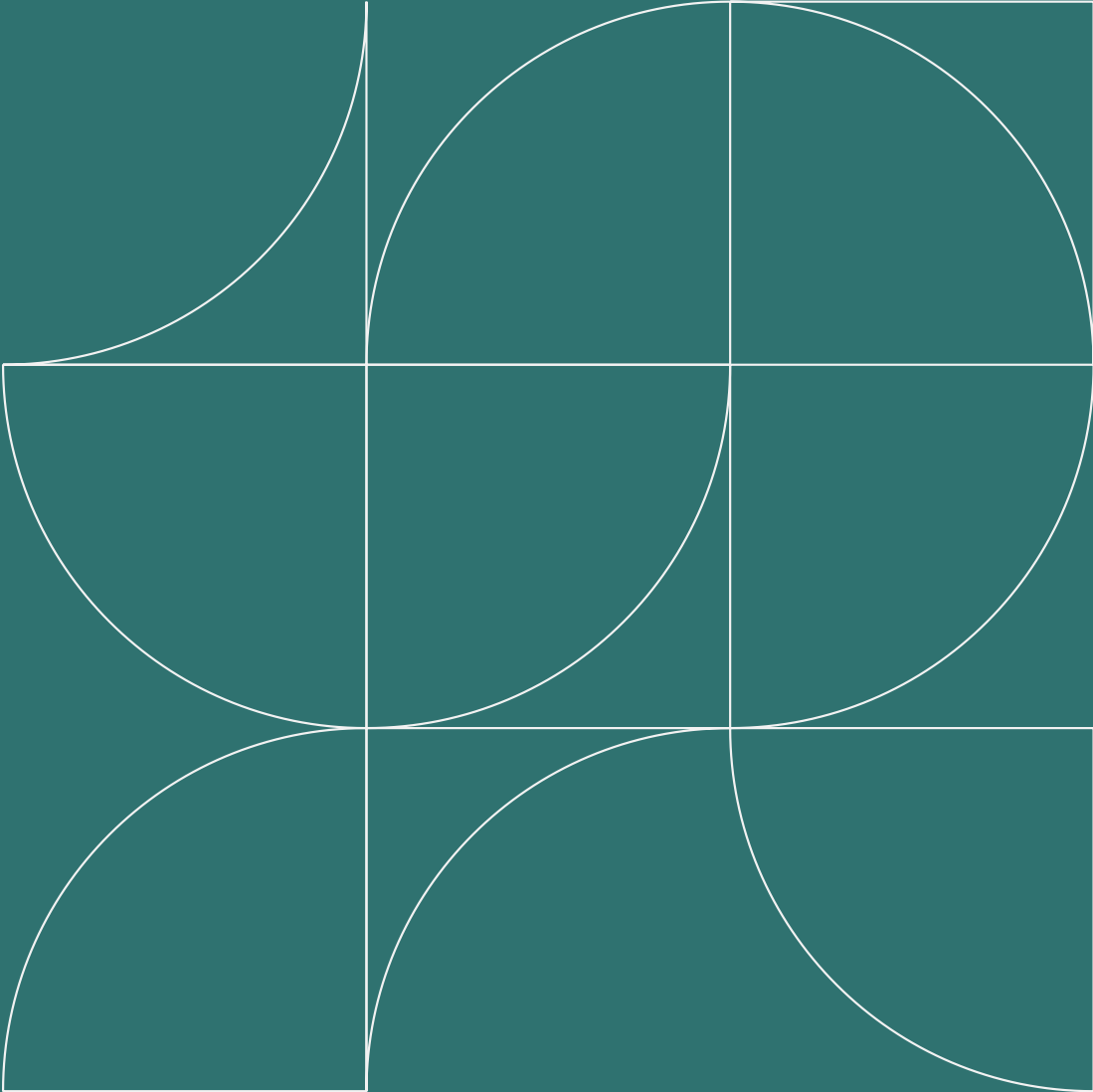
- Disclaim joint employer status
- Specify that contractor/supplier responsible for all aspects of employment, including wages and benefits
- Specify that supplier responsible for hiring, supervision and discipline, and user has no right to comment
- Do not dictate number of employees or enforce productivity standards
- Consider requiring vendor have employees sign an arbitration agreement with a class action waiver that names you as a 3rd party beneficiary

The Question:

Minimizing the Risk

- Include strong indemnification provision
- Avoid contracting with mom & pop vendors
- Investigate wage-hour practices of vendors
- Consider auditing payments to registry/traveler workers to ensure payment for all recorded hours
- Consider requiring proof of AWS elections, meal period waivers
- Provide contractor with forms of hospital AWS agreements and meal period waivers
- Advise registry/traveler workers of the hospital's policy to provide meal and rest periods
- Provide hospital contact for registry/traveler employee to notify of issues
- Consider requiring vendor have employees sign an arbitration agreement with a class action waiver that names you as a 3rd party beneficiary

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The Boards - Question 2



Cook County General Hospital uses travel nurses from a staffing agency. The Hospital tracks the nurses' hours and its employees supervise their work, but the staffing agency pays the nurses' wages.

Are the Hospital and the staffing agency joint employers?

- A. Yes
- B. Probably not
- C. It depends

The Question:

Union-Represented Employees

- Variety of exemptions within Labor Code and Wage Order
 - Significant: Overtime exemption in section 514
- No meal period or waiver exemptions

**thank
you**

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