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Recent Developments In Healthcare Industry Wage And Hour Litigation

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Within the past few years, the dramatic increase in wage and hour litigation has enveloped the hospital industry. Hospitals have been the target of wage and hour lawsuits challenging policies that automatically deduct meal periods from compensable time. Such suits are now the predominant wage and hour issue for the healthcare industry. Plaintiffs have been successful in obtaining conditional "collective action" certification, allowing the lawsuits to proceed on a class basis.[1] But in two recent suits, employers successfully decertified these collective actions following substantial discovery.[2] Nonetheless, the trend of new suits is continuing.

I. Background

The Fair Labor Standards Act (FLSA) allows employers to treat meal periods as non-compensable time in certain circumstances. Generally, employers can deduct time spent on meal periods if the time is spent predominantly for the employee's benefit.

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The plaintiffs' bar has specifically targeted the practice – common among employers in the healthcare industry – of automatically deducting time from an employee's paycheck for meal periods. Hospital workers have claimed that they worked during some or all their meal periods and should have been compensated for this work time.[3]

The FLSA contains a unique procedure that allows an employee to bring a collective action on behalf of similarly situated employees. To determine whether employees are similarly situated, courts typically follow a two-stage process. At the first stage, collective actions have been "conditionally certified" if the worker can identify an unlawful policy or plan that adversely affected the potential class members. Where courts have granted conditional certification, hospitals have been forced to engage in time-consuming and expensive discovery on a classwide basis.[4] Near the close of discovery, at the second stage, the employer can seek to decertify the collective action.

II. Victory At Decertification

In *Frye v. Baptist Memorial Hospital*, the defendant moved to decertify a class that included employees from over 200 different departments, spread across three different acute care facilities.[5] Plaintiffs opposed this motion, arguing that the employees were subject to a single, uniform policy on automatic meal period deductions.

In the first published decision on the subject, the district court granted the motion to decertify. The court noted that, although plaintiffs were subject to a uniform meal period policy, the nature of the claim was not proper for classwide treatment. To prove a violation, plaintiffs would have to prove that they were not relieved from their work duties and were not paid for any time spent working. The court found that these issues required individualized factual determinations. Thus, the district court dismissed the collective action allegations.

The same court recently granted a motion to decertify in *White v. Baptist Memorial Health Care Corporation*.[6] Unlike the plaintiffs in *Frye*, plaintiffs in *White* sought to represent employees only at a single facility. But the court ruled that "the differences" among potential class members outweighed the similarities of the alleged unlawful practices.

In the future, health care providers may be able to draw additional support for decertification from the Supreme Court's decision in *Wal-Mart Stores, Inc. v. Dukes*.[7] In *Dukes*, the Supreme Court reversed certification of a class of current and former female Wal-Mart employees who alleged that Wal-Mart discriminated against them on the basis of their sex. The Court concluded that the plaintiffs had failed to satisfy the commonality requirement of Federal Rule of Civil Procedure Rule 23(a). Since *Dukes*, though FLSA collective actions are not subject to Rule 23, some courts have analyzed the collective action issue with a heightened focus

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on manageability and commonality.[8]

III. Victory At Summary Judgment

A district court recently granted summary judgment in favor of a hospital in an FLSA collective action involving a meal period policy. In *Haviland v. Catholic Health Initiatives-Iowa Corp*., plaintiffs alleged that they should have been paid for time spent on their meal breaks, since they were expected to respond to emergency calls.[9] The district court disagreed, ruling that the hospital could properly deduct time for meal periods.

Plaintiffs in *Haviland* were employed as security officers. They received a 30-minute uncompensated meal period, during which they were expected to remain at the hospital, monitor their radios and respond to emergencies. Plaintiffs argued that this time predominantly benefited the hospital.10 The court granted conditional certification, and the hospital moved for summary judgment.

The district court ruled in favor of the hospital. The court found that being on-site benefited the hospital; however, the evidence showed that plaintiffs were generally free to enjoy their meals and attend to personal matters during their meal periods. There was no evidence the employees were frequently interrupted during their meal breaks. The court also noted that plaintiffs could obtain compensation for days they worked through their meal periods.

IV. Conclusion

While *Frye*, *White* and *Haviland* are important victories for the healthcare industry, they are unlikely to dissuade plaintiffs from suing hospitals for similar or other wage and hour claims such as alleged off-the-clock work or misclassification. Hospitals should assess their wage and hour policies to ensure compliance with the Fair Labor Standards Act.

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[1] *See DeMarco v. Northwestern Memorial Healthcare*, No. 10 C 397, 2011 WL 3510905 (N.D. Ill. Aug. 10, 2011); *Woods v. RHA/Tennessee Group Homes, Inc.*, No. 3:11–cv–00044, 2011 WL 3021742 (M.D. Tenn. July 22, 2011); *Carter v. Jackson-Madison County Hospital District*, No. 1:10–cv–01155, 2011 WL 1256625 (W.D. Tenn. Mar. 31, 2011); *Miller v. Jackson*, No. 3:10-1078, 2011 WL 1060737 (M.D. Tenn. Mar. 21, 2011).

[2] *White v. Baptist Memorial Health Care Corp*., No. 08–2478, 2011 WL 1883959 (W.D.Tenn. May 17, 2011); *Frye v. Baptist Memorial Hospital*, No. CIV. 07-2708, 2010 WL 3862591 (M.D. Tenn. Sept. 27, 2010).

[3] *See, e.g., DeMarco*, 2011 WL 3510905 ; *Cavallaro v. UMass Mem. Health Care Inc*., No. 09-40152, 2010 WL 3609535 (D. Mass. July 2, 2010); *Colozzi v. St. Joseph's Hosp. Health Ctr*., No. 5:08-CV-1220, 2010 WL 1257924 (N.D.N.Y. Mar. 26, 2010); *Hintergerger v. Catholic Health Sys*., No. 08-CV-380S, 2009 WL 3464134 (W.D.N.Y. Oct. 21, 2009.

[4] *See Carter*, 2011 WL 1256625; *Miller*, 2011 WL 1060737; *Bonner v. Metropolitan Security Services, Inc.*, No. SA-10-CV-937-XR, 2011 WL 902252 (W.D. Tex. Mar. 15, 2011); *Norris-Wilson v. Delta-T Group, Inc.*, 270 F.R.D. 596 (S.D. Cal. 2010).

[5] No. CIV. 07-2708, 2010 WL 3862591, at *2 (M.D. Tenn. Sept. 27, 2010).

[6] No. 08–2478, 2011 WL 1883959 (W.D.Tenn. May 17, 2011).

[7] 2011 U.S. LEXIS 4567 (June 20, 2011).

[8] *Cruz v. Dollar Tree Stores, Inc*., 2011 WL 2682967, *1 (N.D.Cal. Jul 08, 2011) (ordering decertification based, in part, on Supreme Court's decision in *Dukes*).

[9] 729 F.Supp.2d 1038, 1041-45 (S.D. Iowa 2010).

[10] Id. at 1050-58.