

Joint Employers Must Aggregate Hours Worked When Calculating Overtime

Partners HealthCare System, Inc. and its affiliates (collectively, Partners) recently agreed to pay 700 employees more than \$2.7 million in back wages for unpaid overtime worked between January 1, 2007 and March 21, 2009. The agreement resolves a lawsuit alleging that Partners violated the Fair Labor Standards Act (FLSA) by failing to aggregate hours worked by employees at multiple affiliated facilities during a single workweek.

Under the FLSA, employers, including joint employers, must pay overtime compensation to non-exempt employees who work more than 40 hours in a given workweek. Joint employers must aggregate hours worked by an employee at different joint employment sites when calculating the overtime compensation due to that employee. To determine whether a joint employment relationship exists, the Department of Labor and the courts analyze several factors. No single factor is controlling, and the determination will depend on the specific facts. The factors include:

- Whether the employee's work simultaneously benefits two or more employers;
- Whether there is an arrangement between employers to share the employee's services, such as by interchanging employees;
- Whether one employer is acting directly or indirectly in the interest of the other employer(s) in relation to the employee; and
- Whether two or more employers share control of the employee, directly or indirectly, because one employer controls, is controlled by, or is under common control with the other employer.

In *Solis v. Partners HealthCare System, Inc.*, Partners had affiliated hospitals and health care companies located throughout eastern Massachusetts. During the time period in question, some Partners employees worked at more than one affiliated facility in a given workweek. Because the facilities maintained separate payrolls, Partners did not aggregate those hours when determining whether the employees were entitled to overtime compensation. The different facilities were, however, joint employers. As a result, Partners was not paying overtime wages that were due to some employees.

Ultimately, Partners discovered its error and notified the Department of Labor. After an investigation, the Wage and Hour Division confirmed that Partners had

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indeed violated the FLSA. Partners and the Department of Labor then agreed to a consent judgment pursuant to which Partners will pay more than \$2.7 million for unpaid overtime wages to resolve the matter.

The consent judgment underscores the importance for employers to properly calculate work time to ensure compliance with FLSA requirements. As Partners can attest, the failure to do so can be very costly.

The attorneys in [Reinhart's Labor and Employment Practice](#) are ready to assist you in understanding and applying the requirements of the FLSA. Please contact us if you have any questions on the FLSA's provisions for overtime compensation.

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