

Vorys, Sater, Seymour and Pease LLP

Labor & Employment Law E-Alert

CASE MANAGERS MUST BE PAID OVERTIME, DOL SAYS

According to a recent U.S. Department of Labor Opinion Letter, Case Managers employed by a health care service provider for individuals with disabilities must be paid overtime pay under the Fair Labor Standards Act. DOL Opinion Letter FLSA2007-7. The DOL concluded that Case Managers did not qualify for the administrative exemption from the FLSA's overtime pay requirements.

The FLSA generally requires employers to pay a minimum wage and overtime pay for all hours worked over 40 in a workweek to all employees. The FLSA provides a complete exemption from these requirements for any employee employed in a bona fide executive, administrative, or professional capacity. Employees may qualify for exemption if all of the pertinent tests relating to job duties and salary are met.

To qualify as an exempt administrative employee under the FLSA regulations, an employee's primary duty must be the performance of "office or non-manual work **directly related to the management or general business operations of the employer or the employer's customers**" and requires "the exercise of discretion and independent judgment with respect to matters of significance." (The DOL did not address the executive exemption because the Case Managers at issue did not supervise other employees).

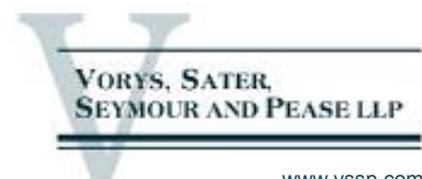
Under the particular facts, the Case Manager's primary duties were to meet and work with consumers with disabilities to gather information, to assess each consumer's needs and the costs of care, to prepare a plan of care, and to identify and implement services to meet the consumer's needs. The ultimate goal was to help the consumers increase their self-sufficiency at home and in the community. The Case Managers were independently responsible for developing a plan of care for each consumer and monitoring the delivery of services to consumers, free from direct supervision.

Although the DOL recognized that the administrative exemption may apply to "employees acting as advisors or consultants to their employer's clients or customers," the DOL also stressed that the exemption covers only employees whose work involves assisting with the running or servicing the business itself (i.e., "staff" work), as distinguished, for example, from working on a production line or selling a product in a retail or service business. Using this "production versus staff" dichotomy as an illustrative tool, the DOL held that the Case Managers performed only the ongoing, day-to-day case management services (i.e., "production" work) of the employer and not administrative functions directly related to managing either the employer's business or any business of the employer's customers. Therefore, the Case Managers described in the Opinion Letter did not qualify for the administrative exemption.

Each Case Manager's exemption status must still be determined on an individual basis. However, the DOL's position is that those with duties described above are considered non-exempt and, thus, entitled to overtime pay.

If you have any questions about this or any other employment-related issue, please contact your Vorys lawyer.

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