

# THE INSIDE PERSPECTIVE

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## Nurses and Overtime Pay: The More Things Change, The More They Stay the Same

After a volley in the legislature, the new FLSA regulations governing the white collar overtime exemptions went into effect on August 23, 2004. Even though the new regulations do not change the pay status of either registered or licensed practical nurses, questions linger regarding whether employers are legally obligated to pay nurses overtime. Here are the facts:

- Registered nurses are considered learned professionals and are exempt from overtime. However, to utilize the exemption, registered nurses must be salaried.
- As a general rule, salaried employees are not subject to deductions for missed time from work.
- Employers are not required by law to salary their registered nurses and treat them as exempt. Many registered nurses have been and continue to be paid by the hour – with shift premiums or other incentives—as a result of market factors. If RNs are paid by the hour, they must be paid for overtime.
- Licensed practical nurses are nonexempt. This was true both before and after the new regulations. In most cases, they must be paid for overtime.
- Some health care employers utilize the 8/80 rule to minimize their overtime obligations. The 8/80 rule may be used by hospitals or other establishments that are “primarily engaged in care of the sick, the aged, or the mentally ill or defective, who reside on the premises.” Overtime may be calculated on a 14 day period (rather than a 7-day week), as long as the employees are paid overtime for hours worked in excess of 8 in any day or 80 in the 14 day period.
- Several states, including Maine, Maryland, Minnesota, New Jersey, Oregon and Washington, have statutes that place limits on mandatory overtime for nurses. There has also been activity on this issue in Congress.
- Some registered nurses and licensed practical nurses are represented by unions, including the Service Employees International Union (SEIU) and the United Nurses Association, and overtime is typically an issue in contract negotiations.

# TIP

Representatives for registered nurses lobbied for a change in the FLSA regulations to specify that RNs are nonexempt and, therefore, overtime pay is mandatory. The Department of Labor, however, rejected this proposed change. Consequently, the status of RNs has not changed; they were and are still considered exempt professionals under the FLSA. Regardless of this fact, employers who have in the past opted to pay RNs by the hour (with overtime and other premiums) may continue to do so.



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