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****EMPLOYMENT LAW ALERT****

Beware of the Pennsylvania Minimum Wage Law!

By: S. Whitney Rahman

In a recent case, Bayada Nurses, Inc. v. Department of Labor and Industry, 2010 WL 4630856 (Pa. Supreme Ct. November 17, 2010), the Pennsylvania Supreme Court reaffirmed that the Pennsylvania Minimum Wage Law (“PMWL”) provides greater rights to employees in certain circumstances than the Fair Labor Standards Act (“FLSA”). Employers need to be aware that certain exemptions from overtime that are allowed under the FLSA are not allowed under Pennsylvania law.

In Bayada, the employer argued that its home health care aides, who assist clients in their homes, did not need to be paid overtime under the PMWL exemption for individuals providing domestic service in a home. Under the FLSA, such workers, even if employed by a third-party agency such as Bayada, are subject to the exemption.

Under Pennsylvania law, however, according to the Bayada court, the exemption applies only to such individuals when directly employed by the homeowner. Home health aides

employed by third-party agencies such as Bayada therefore are entitled to overtime, even though they would not be entitled to overtime under the FLSA. This case highlights an often overlooked principle of overtime law -- if state law is more favorable to the employee, it will apply instead of the FLSA. You need to be aware that there are other areas as well where the PMWL provides greater protection from employees than the FLSA in addition to the domestic worker exemption. For example, the federal exemption for computer professionals is not found in the PMWL. Thus, while computer professionals may fit within another exemption recognized in Pennsylvania, such as a professional or administrative exemption, if they do not, they cannot be considered exempt under the computer professional exemption. Therefore, there may be computer professionals who are entitled to overtime despite the federal exemption.

WHAT THIS MEANS FOR YOU

Employers should examine carefully whether the employees they consider to be exempt fit within state as well as federal exemptions. If they do not, they probably are entitled to overtime for hours worked over 40 in one week.

If you have any questions about the FLSA, the PMWL, how these laws interact, or any other overtime or wage issue, please call Whitney Rahman or John Roland at 610-372-5588.