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U.S. Department of Labor Focuses Enforcement Efforts on North Carolina Residential Care Facilities

Shorts on Long Term Care January 2012

01.05.2012

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On December 1, 2011, the United States Department of Labor (DOL) announced a new “enforcement initiative” focused on residential care facilities in North Carolina. The DOL’s press release announcing this new initiative says its investigators will be visiting residential care facilities throughout the state to interview employees and review their pay practices and records for compliance with minimum wage, overtime and record-keeping requirements of the Fair Labor Standards Act (FLSA). For purposes of the DOL’s new enforcement effort, residential care facilities include group homes, long term care facilities, and other businesses in North Carolina that provide residential care for children, the aged and other individuals with limited self-care abilities.

In announcing the new initiative, the DOL cited the track record of its Raleigh district office in investigating 120 residential care facilities in North Carolina since 2006 and recovering more than \$980,600 in back pay for over 1,000 employees of such facilities. Examples of FLSA violations by employers in North Carolina’s residential care

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industry, which the DOL says were found during these investigations and will be the focus of its enforcement initiative in North Carolina, include:

- Failing to pay workers for work performed outside an employee's scheduled shift or time spent attending required staff meetings and employer-sponsored training
- Deducting time or pay for sleeping periods for employees on duty for less than a 24-hour period
- Deducting a set amount of time or pay for lunch periods (e.g., 30 minutes or an hour) when employees are working through such automatically deducted lunch periods
- Paying nonexempt employees a flat salary without regard to overtime
- Making unlawful deductions for uniforms and other items that cause an employee's wages to fall below the federal minimum wage of \$7.25 per hour

The DOL's press release says its investigators will be assessing compliance with FLSA requirements among facility owners, operators, third-party management companies and other businesses associated with North Carolina residential care facilities, especially independently owned group homes where findings of FLSA violations have been most widespread. The DOL's announcement states that the goals of its enforcement initiative



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are “to remedy systemic violations, educate employers about their legal responsibilities and promote sustained compliance throughout the industry” and emphasizes the DOL is also providing FLSA compliance assistance and education to employers and industry associations.

In announcing this initiative, the DOL also reminded employers that they can be subject to corrective action for any FLSA violations, including litigation, civil money penalties and liquidated damages, to recover employees’ wages and ensure compliance with the FLSA. Employers in North Carolina’s residential care industry should review their pay practices, and consult with employment law counsel if necessary, to make sure they are paying employees for all time worked in a given work shift, workday, and workweek.



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