

FAIR LABOR STANDARDS: OVERTIME REGULATIONS

Position

ANA holds that it is essential to preserve the right to overtime compensation for registered nurses.

BACKGROUND

On April 20, 2004 the U.S. Department of Labor (DOL) issued a revised Fair Labor Standards Act (FLSA) rule that threatens the rights of registered nurses to receive overtime compensation. During the rule making process, ANA actively opposed the revised FLSA rule and supported efforts by members of Congress to modify and to clarify changes to the rule. However, these efforts were not successful and the final rule went into effect on August 23, 2004.

Part 541 of the final rule redefines which workers are categorized as salaried professionals, administrative managers, and executives and, therefore, which workers are exempt from federal overtime protections.

A worker can be exempted from overtime protections under one of these categories if he or she meets a two-pronged test:

- 1. *Duties*—Her/his qualifications and duties must meet the standards outlined in the regulations.
- 2. *Salary*—She/he must be paid on a salary basis an amount more than \$455 per week.

Although the DOL correctly asserts that the status of salaried registered nurses remains unchanged under this new rule, it ignores the fact that most registered nurses are paid on an hourly basis. Registered nurses have long met the "duties test" to be considered learned professionals; however, because most registered nurses are paid on an hourly basis, they do not meet the second prong of the existing rule—the salary component—and therefore are entitled to overtime compensation.

While the "duties test" has not changed, the definition of a salaried employee has been altered to allow salaried compensation to be calculated on an hourly or a shift basis, on top of a guaranteed minimum. This creates a degree of legal ambiguity that employers may try to exploit. Creating doubt about registered nurses' right to overtime pay threatens ongoing efforts to retain and recruit nurses. Such uncertainty is particularly detrimental at a time when mandatory overtime is a common practice and RNs are in short supply.

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RATIONALE

At a time when, according to the U.S. Department of Health and Human Services, there already is a shortage of nearly 139,000 registered nurses in the United States, ANA believes federal pay guidelines should encourage the recruitment and retention of nurses. Raising doubts in the minds of hard-working RNs, as well as potential nurses, about whether they will qualify for overtime pay does not accomplish that goal. ANA also is concerned that, if the economic disincentive of paying time-and-a-half is removed, employers are even more likely to rely on mandatory overtime as a regular nurse-staffing tool. A survey by ANA found that more than two-thirds of registered nurses already report working some form of mandatory or unplanned overtime every month.