

Client Alert **Employment & Labor**

Courtesy Of NJ Department Of Labor And Workforce Development: New Posting And Notification Requirements For Employers

The New Jersey Department of Labor and Workforce Development (NJDOL) has issued a new regulation that requires employers to post in a conspicuous place, accessible to all employees in each of their workplaces, a form notification concerning the employer's obligations to maintain and report records regarding wages, benefits, taxes, and other contributions and assessments under New Jersey's wage, benefit and tax laws.

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Update: Inadvertent Elimination Of Inside Sales Exemption To Be Corrected

In our November Client Alert we advised our readers that in adopting the federal regulations, the NJDOL inadvertently eliminated the commissioned sales exemption, often referred to as the "inside sales" or "retail sales" exemption, and we anticipated that the problem would be remedied.

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Registered Nurses Are Not Entitled to Overtime

In a decision that may have far-reaching consequences in New Jersey's health care industry, the State's Appellate Division held that registered nurses are not entitled to overtime compensation under the New Jersey Wage and Hour Law (NJWHL).

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*Courtesy Of NJ Department Of Labor And Workforce
Development: New Posting And Notification
Requirements For Employers (continued)*

The new regulation, which became effective November 7, 2011, also requires employers to provide (a) each employee with a written copy of the form notification not later than December 7, 2011, and (b) those employees hired after November 7, 2011 with a written copy of the form notification at the time of the employee's hiring.

The regulation allows an employer who has internet site or intranet site for exclusive use by its employees and to which all employees have access, to satisfy the posting obligation by posting the notification on the site. The regulation further permits an employer to satisfy its obligation to distribute a written copy of the notification to employees by providing that copy via e-mail.

For a copy of the notification form, [click here](#).

*Update: Inadvertent Elimination Of Inside Sales
Exemption To Be Corrected (continued)*

On November 21, 2011, the NJDOL published a notice advising that a public hearing will be held on December 13, 2011 for the purpose of considering a proposal to restore the "inside sales" exemption. The notice further advises that any interested parties should submit written comments by no later than January 20, 2012 and this firm's Employment and Labor Practice Group was contacted to provide its comments. It is widely expected that the exemption will be restored. However, in the interim, employers must take care to ensure that they temporarily reclassify any relevant employees.

Registered Nurses Are Not Entitled to Overtime (continued)

In *Anderson v. Phoenix Health Care, Inc.*, No. A-2607-10T2, 2011 N.J. Super. Unpub. LEXIS 2826 (App. Div. Nov. 16, 2011), the appellate court ruled that because the

nurses fell under the professional exemption of the NJWHL, they were not covered by that law's overtime provisions, even though they were paid on an hourly basis.

The court analyzed the professional exemption contained in the NJWHL, which at the time defined "professional" to include employees whose primary duties required "knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study" and who earned not less than \$400 per week. The nurses conceded that they performed the work of "professionals" and earned that minimum salary.

The court next considered whether the nurses being paid on an hourly and not salaried basis affected the outcome, and concluded that it did not, as the court found that the critical question was whether the employee was a professional, and not how the employee was compensated. The Appellate Division also relied on the NJWHL's good faith exception because defendants conformed to the NJDOL's longstanding interpretation that registered nurses were not entitled to overtime so long as they earned more than the weekly minimum.

Although *Anderson* is significant, its importance should not be overstated. *Anderson* was decided based on a regulation – N.J.A.C. 12:56-7.3 – that, as discussed in our last Client Alert, was superseded by regulations adopted on August 15, 2011. The new regulation retains the exemption for, among others, "professionals" but defines and delimits those exempted by referencing federal wage and hour regulations. Because the parties in *Anderson* did not argue that the new regulations applied, the Appellate Division made clear that it was not deciding whether nurses similarly situated as plaintiffs would, in the future, be entitled to overtime compensation.

Under the now applicable federal regulations, registered nurses who are registered by the appropriate State examining board generally meet the duties requirements for the learned professional exemption. However, it is important for health care employers to keep in mind that the same federal regulations provide that licensed practical nurses and other similar health care employees generally do not qualify as exempt learned professionals because possession of a specialized advanced academic degree is not a standard prerequisite for entry into those occupations.

For additional information concerning the new regulations, please feel free to contact the following attorneys from our Employment and Labor Practice Group.

Galit Kierkut, Esq.

Client Alert Editor

Member, Employment and Labor Practice Group

gkierkut@sillscummis.com | (973) 643-5896

David H. Ganz, Esq.

Client Alert Author

Of Counsel, Employment and Labor Practice Group

dganz@sillscummis.com | (973) 643-4852

Iván A. Méndez, Jr., Esq.

Client Alert Author

Associate, Employment and Labor Practice Group

imendez@sillscummis.com | (973) 643-5164