**Plaintiffs Seek Class Action Status Against Baylor Scott & White Health for Overtime Pay**

***Employees are alleging that the health system violated the Fair Labor and Standards Act with advanced practice provider pay.***

**Will Maddox, Healthcare Business, 07 August 2020**

[***https://www.dmagazine.com/healthcare-business/2020/08/plaintiffs-seeks-class-action-status-against-baylor-scott-white-health-for-overtime-pay/?***](https://www.dmagazine.com/healthcare-business/2020/08/plaintiffs-seeks-class-action-status-against-baylor-scott-white-health-for-overtime-pay/)

Eighteen plaintiffs are seeking collective against Baylor Scott & White Health for violating overtime compensation laws and making improper deductions from salaried employees. The federal suit was filed in the Dallas Division of the Northern Division of Texas and seeks back pay, additional funds for liquidated damages, as well as attorney’s fees.

In order to classify an employee as salaried, employers must meet the “salary basis test,” which means that wrongful deductions from an employee’s salary can take them out of the salaried exemption and turn them into hourly employees, who are entitled to overtime if they work more than 40 hours a week. The plaintiffs were originally hired as salaried employees, but the plaintiffs allege that their salary was wrongfully deducted, making them eligible for overtime pay, which they didn’t receive when they worked more than 40 hours.

The suit is alleging damages over a period of two or three years, depending on the court’s ruling. The 18 advanced practice providers currently involved in the suit allege $53,000 in lost income over three years due to the BSW’s policies. The Federal Labor and Standards Act, which regulates overtime pay rules, also awards liquidated damages equal to the amount of lost pay if the lawsuit is successful. That means the total damages for all eighteen plaintiffs would be around $1.9 million. The suit is asking the courts for class-action status, meaning any of the hundreds of BSW advanced practice providers such as nurse practitioners or physician’s assistants could opt into the suit if they experienced similar salary deductions, multiplying the damages.

Specifically, plaintiffs are speaking of off-the-clock duties like answering texts, emails, and other work-related tasks on the computer for which they were not compensated when they exceeded 40 hours a week. The pay issues violated the Fair Labor and Standards Act, and were “numerous, ongoing, took place over a span of many years, were made at numerous of Defendants facilities and affected all of the named plaintiffs and similarly situated employees,” according to the suit. The alleged violations ran from April 2017 to the present.

The suit involves employees at numerous BSW facilities, some of whom were in DFW such as Baylor University Medical Center in Dallas. Because the case involves FLSA, opt-in class action is an option to other providers, which means employees can join the class action lawsuit when they are notified. Plaintiff’s lawyers have moved to conditional class certification, which would allow them to notify all potential class action employees, who can opt in if they choose. The lawsuit is targeting advance practice providers such as physician’s assistants and nurse practitioners who work for BSW or HealthTexas Provider Network, a provider group that is part of BSW.

The suit says that Baylor attempted to make corrective payments, but claims that the errors were not an accounting mistake, but are part of the policy and practice for BSW. FLSA allows employers to make corrective payments for good-faith mistakes, not policy decisions, so plaintiffs argue that BSW’s payments are not viable.

Plaintiffs are asking for a trial by jury. Plaintiffs are awaiting a decision about whether the suit can be designated class action, allowing others to join. Because the litigation is pending, BSW did not comment on the case.