

EMPLOYEES MUST BE PAID FOR UNAPPROVED OVERTIME

By Karen Sutherland

On July 29, 2005, the United States Department of Labor (DOL) finalized a \$1.64 million settlement with Group Health Cooperative regarding overtime pay to its employees. The settlement involves payments to about 939 current and former employees, and follows a review of Group Health's timekeeping practices for more than 9,000 current and former employees.

The fact that the overtime laws are in the news again provides an excellent opportunity to highlight some key points about them:

- Even large, well-organized employers can run afoul of the overtime laws.
- The overtime laws are complicated, and can substantially affect your bottom line.
- Reporting and recordkeeping policies regarding hours worked need to be kept current and enforced.

By way of background, the overtime laws apply to all nonexempt employees, and require that the employees be paid time and a half for all hours in excess of 40 hours per week, with a few exceptions that are beyond the scope of this article. Though I do not know if this was an issue in the Group Health case, my experience with other employers is that overtime can creep up on an employer because of dedicated employees going the "extra mile" and coming to work early or working late without recording their time. It can also occur when a slow or under-producing employee works extra hours to generate the same output as his or her peers, or when an employer gives an employee a project deadline the employee is otherwise unable to meet. Regardless of the reason, if the employer knows or should have known that nonexempt employees are working, then the employer has to pay them for their time. The employer also has a legal duty to keep accurate time records.

This brief article is a broad summary only. It lacks specificity about the law and about the effects of different fact patterns, and thus shall not be applied without consulting an attorney. It also focuses on Washington State law and federal law, and the laws of other jurisdictions may vary materially. The information set forth in this article is a broad and general overview of complex topics, and is not legal advice. It also does not take into account any changes to the law or in interpretations of the law that may have occurred since it was written. For more information, contact Karen Sutherland at ksutherland@omwlaw.com