

WHISARD Compliance Action Report

U.S. Department of Labor
Wage and Hour Division

Case ID: 1740079 Originating District: Seattle District Office
Local Filing Number: 2014-323-07167 Investigating District: Seattle District Office
WHMIS Case Number: Lead Investigator: (b) (6), (b) (7)(C)
Registration Date: 09/11/2014
Assignment Date: 10/02/2014

Employer Information

Trade Name: Overlake Hospital Legal Name: Overlake Hospital Medical Center
Address: 1035 116th Ave NE EIN: 91-0652651
Bellevue, WA98004 County: King
NAICS Code: 622110
No. Of Employees: (b) (4)

Investigation Information

Period Investigated From: 12/09/2012 BNPI:
To: 12/07/2014 Reinvestigation:
Investigation Type: (b) (7)(E) Recurring Violation:
Investigation Tool: Full Investigation Future Compliance Agreed:
Compliance Status: Agree to Comply Involved in AG:

Recommended Action:

BWFS: RO/NO Review:
CMP: Follow Up Investigation:
Litigation: Other Action:
Civil Action: Denial of Future Certificate:
Criminal Action: BW Payment Deadline:
Submit For Opinion: Trailer forms attached:

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
CL Totals:	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

FLSA

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSA Totals:	0	1	\$0.00	\$0.00	\$0.00	\$0.00	

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FLSNM

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
FLSNM Totals:	0	1	\$0.00	\$0.00	\$0.00	\$0.00	
Total Violations Under FLSNM:	2						\$0.00

** CMPs computed do not necessarily indicate CMPs assessed.*

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

Sec 3(s)(1)(B) cov. 207(r)(1) vio:ER failed to provide functional space and adequate break time for nursing mothers. RK vio: records not accurate. Sec 15(a)(3)Retaliation (b) (7)(E) . FC w/ER on 1/13/2015 & 2/6/2015, ER ATC. WH1088(Poster), WH1282(HRG), WH1261(RK), WH1262(OT), WH1281(541),WH1312(HW), FS28d,FS44,FS73^(b) notified of dispos. on 2/6/2015. ^(b) stated had hired atty & intended to file suit.Rec: Conclude in Whis

WHI Signature: _____ Date: 02/13/2015

Reviewed By: _____ Date: _____

Case ID: 1740079

Overlake Hospital Medical Center
1035 116th Ave NE
Bellevue, WA 98004
425-688-5000

EIN: 91-0652651

FLSA NURSING MOTHERS NARRATIVE

This is a full investigation and was initiated (b) (6), (b) (7)(C).

(b) (6), (b) (7)(C) (b) (7)(E) (exh. D-2)

Coverage

The subject firm, Overlake Hospital Medical Center, is engaged in the operation of a hospital, providing care to the residents who are sick, aged, or disabled that need medical attention. It's established as a corporation in WA State in 1970. The corporate office is located on 1250 NE 145th Street, Shoreline, WA 98155. The ADV for is approximately (b) (4) million per year. There are total (b) (4) employees for the enterprise. The subject firm employs doctors and nurses onsite to provide medical care and administer the medication. All employees are covered on an enterprise basis under 3(s)(1)(B) of the Fair Labor Standards Act for the entire investigative period. (Exh. C-1, C-2)

Corp. Office:

Overlake Hospital Medical Center - 1035 116th Ave NE, Bellevue, WA 98004, 425-688-5000

Branch locations:

Information Service/Epic Department - 1120 112th Ave NE, Fifth Floor, Bellevue, WA 98004

Overlake Specialty School - 2610 116th Ave NE, Bellevue, WA 98004

Breast Screening Center-Issaquah/Highmark Specialty Center - 1740 NW Maple St, Suite 207, Issaquah, WA 98027

Overlake Hospital Case ID: 1740079

Overlake Outpatient Behavioral Health Services - 1750 112th Ave NE, Suite B-102, Bellevue, WA 98004
Overlake Senior Health Center - 1750 112th Ave NE, Suite A-101, Bellevue, WA 98004
Overlake Outpatient Medical Imaging-Issaquah - 5708 E. Lake Sammamish Pkwy SE, Issaquah, WA 98029
Overlake Outpatient Medical Imaging-Redmond - 17209 Redmond Way, Redmond, WA 98052

Sec. 3(d) Employer:

Brain Read, Total Compensation Director. Mr. Read is in charge of compensation department and handles all issues related to employees' compensation, deals with government authorities for any audits and investigations.

Lisa Morten, HR Director. Ms. Morten is in charge of human resources department.

Corporate Officers:

John Hayhurst, Chair
Jim Doud, Secretary
Patricia Bedient, Treasurer
Cecily Hall, Immediate Past Chair
J. Michael Marsh, President & CEO
David Schultz, Executive VP & COO
Gary McLaughlin, Executive VP Finance & CFO

Period of investigation: 12/9/2012 to 12/07/2014

MODO: The MODO is Seattle, WA DO. Case has been associated with MODO on Jan15, 2015. (exh. D-1)

Prior History: (exh. D-3)

May 2006 (b) (7)(E) case. Case# 1436417. No violation found. Employer covered, employee FMLA eligible. (b) (6), (b) (7)(C) wasn't terminated due to use of FMLA but for excessive unscheduled, non-FMLA absences. No back wage due.

1099s: None claimed

Sec, 16(b): None

Exemptions:

None claimed.

541.300 Professional exemptions:

Physicians, registered or certified medical technologists, and Registered Nurses (RN) meet 541 professional exemption requirements, but Licensed Practical Nurses (LPN) and Patient Care Technicians do not.

Status of Compliance:

(b) (6), (b) (7)(C) Data:

(b) (6), (b) (7)(C) of the subject firm, **(b) (7)(E)** supervisor changed **(b) (6)** hours worked on timecard, deducting time worked and charging breaks even when employees didn't take them. **(b) (6), (b) (7)(C)** **(b) (7)(E)** supervisor has not allowed nursing mothers to take break and didn't provide a secure place for them to express milk. **(b) (6), (b) (7)(C)** seeks back wage for missed hours worked and proper employer policy for nursing mothers. **(b) (6), (b) (7)(C)** also **(b) (7)(E)** **(b) (6)** was being discriminated and fired from her job wrongfully.

(b) (7)(E)

- I. Nursing Mothers – ER ATC.
2. Deducted hours and charged for untaken lunch break. – no back wage due since **(b) (6), (b) (7)(C)** worked 40 hours or less per work week. Per Klinghoffer Rule, only \$7.25/per hour is enforced.

(b) (7)(E)

- I. Discrimination – insufficient evidence
- II. Changed her hours worked on timecard – employer used 7-minutes “rounding” practices. (CFR785.48(b))
Also, **(b) (6), (b) (7)(C)** hours worked were recorded under different floors time-keeping account when **(b) (6)** work on floating shift and went to work at the different floor. **(b) (6)** hours worked were recorded and not lost.

FLSNM:

207(r)(1)(A) – Failure to provide adequate break time (frequency, duration, or complete denial):

Violation found.

(b) (6), (b) (7)(C) was not given adequate break time to express milk when needed. **(b) (7)(E)** was supported by other employees. Other nursing mothers also have had the same problem with the break time since the employer is a hospital

medical center, and employees are not able to take a break due to the nature of the business. Employees are required to carry a phone and need to return to work immediately when get called since the patients need medical attention immediately, this especially true in the emergency, surgery, and the post-surgery floors. Failure to provide adequate break time has caused an employee to have breast infection. (exh. B-1, B-2, B-4, B-5, B-7 to B-9, B-11, B-15-B-17)

207(r)(1)(B)- Failure to provide functional space (bathroom not permissible, space not free from intrusion, not shielded from view):

Violations found.

(b) (6), (b) (7)(C) does not have a private space where (b) (6) can express the milk free from intrusion. The company has provided a room for the use of expressing milk, but the room was also used as physician/admin/consultant office. The room doesn't have a lock. It has window but doesn't have any window covering. Employees testified that the nursing mothers had to hang a bed sheet over the window, and other employees still just pop in despite that they had put a note on the door that tell people it's in use. The room has chairs and a table, but doesn't have refrigerator. (exh. B-1, B-2, B-4, B-5, B-7 to B-9, B-11, B-15-B-17)

207(r)(2) – Compensation for break time:

No violations found.

The employer has paid (b) (6), (b) (7)(C) for (b) (6) time expressing milk.

207(r)(3) – Undue Hardship:

No violations.

The employer has hundreds of employees at the location where the employee works and made no objection to its obligation to comply with the law.

FLSA:

Section 6:

There is no apparent minimum wages violation.

Payroll and time card analysis revealed that employees generally were paid above the applicable Federal minimum wages

of \$7.25 per hour.

Lunch break:

Employees are not required to clock in & out for lunch break. The employer deducted the 30 minutes lunch break automatically. If anyone didn't take lunch break, they're required to notify the supervisor and do an adjustment on time card per company policy. Some employees stated that their lunch break was interrupted sometimes for they're called back to duty during the lunch break and were not paid for that ½ hour. After reviewing their time & pay records, it appeared that they're either paid for or didn't work more than 40 hours in a work week. Per Klinghoffer Rule, only Federal minimum wage of \$7.25 per hour is enforceable in the non-overtime weeks. (exh. B-1 to B-18)

Time recording / Keeping:

Employer used 7-minutes as a “rounding” practices. (CFR785.48(b)) If employee clocked in at, for example, 7:06pm, it changed to 7:00pm, and if employee clocked in at 7:09pm, it changed to 7:15pm. It was found that employer use this time-keeping method in the favor of both employer and employees, and over a period of time, the employees were properly compensated for all the time they have actually worked.

Section 7:

There is no apparent overtime violation.

Section 11:

There was a violation.

The time and pay records were not accurately. Employer failed to keep and paid the untaken lunch break.

Section 12:

No employment of minors was observed or found. (exh. B-1 to B-12)

Section 15(a)(3) Prohibited Acts - Retaliation:

(b) (6), (b) (7)(C) (b) (7)(E) (b) (6) was retaliated by (b) (6) manager, and then eventually was terminated for unjust reasons.

(b) (7)(E)

(b) (6), (b) (7)(C) stated that (b) (6), (b) (7)(C) had documents and co-workers as witness that (b) (6), (b) (7)(C) been doing well on the job, and that the employer's allegation of (b) (6), (b) (7)(C) wrong doing / unprofessional treatment of patients was not true. (b) (6), (b) (7)(C) stated that (b) (6), (b) (7)(C) would provide those documents and have statements from (b) (6), (b) (7)(C) co-workers, but (b) (6), (b) (7)(C) never provided one to WHI, despite the numerous requests by WHI. WHI had called the employee that (b) (6), (b) (7)(C) mentioned that would give favor statement (b) (6), (b) (7)(C) witness), but that employee has declined to be interviewed.

On the other hand, the employer has provided some documents that show there were issues with (b) (6), (b) (7)(C) performance since beginning of 2014, and employer has been consulting with (b) (6), (b) (7)(C) about (b) (6), (b) (7)(C) poor performance in the past 10 months prior to firing (b) (6), (b) (7)(C) (exh. D-4 to D-9)

Disposition:

A conference was held on Jan13, 2015 at the employer's office to discuss the findings and regulations. In attendance were Mr. Brain Read, Total Compensation Director, and Ms. Lisa Morten, HR Director, and WHI (b) (6), (b) (7)(C). The FLSNM and FLSA regulations were reviewed thoroughly with emphasis given to Nursing Mothers and retaliations.

WHI discussed the nursing mothers' break time and space issues. Employers stated that they knew and understand the Nursing Mothers laws very well, and though they're in compliance with the law. WHI informed them that some nursing mothers were not able to take the break to express milk when they needed to, due to the nature of their work duty. WHI also informed them that the nursing mothers didn't have privacy when they're expressing milk because the door doesn't have lock and no window covers. Employers explained that (b) (6), (b) (7)(C) only put a small sticker note on the door, so maybe the other employees didn't see that and just pop-in. Employers were advised that it didn't matter how big or small the note was, employees would have seen the note when they stood in front of the door, and that the employer need to take other steps to make sure the room is "free from intrusion". Employers were also advised that nursing mothers should be allowed to take the break to express milk whenever / as often as they need to, and as long as they need to, and the frequency and duration of the breaks that nursing mothers need will vary. Employers stated that they'd try to improve the privacy of the room for the nursing mothers and would give them the break time when they need it.

Regarding the retaliation (b) (7)(E) employers explained that they took retaliation very seriously, and that they had conducted their own investigation. Employers stated that the employee was terminated due to (b) (6), (b) (7)(C) unprofessional treatment of patients, non-compliance with the company rule/requirement/policy, and improper/unacceptable behavior toward the patients. Employers stated that they would provide some documents regarding this issue to WHI.

The unpaid lunch break was discussed. Employers explained that they understood the employees might not be able to enjoy the lunch break without any interruption, but they'd told employees frequently that they needed to notify the supervisors and adjust the time sheets if they didn't take break. Employers stated that they're not happy hearing that some employees still didn't do that. Employers assured that they'd emphasize the importance of break and the company's policy regarding break in the mandatory meetings/education classes again.

Overlake Hospital Case ID: 1740079

Jan16, 2015, employer provide a copy of the termination letter and other documents to support their claim of non-retaliation. WHI requested more documents or information. (exh. D-4, D-6 to D-9)

Jan 29, 2015, (b) (6), (b) (7)(C) contacted the office and stated that (b) (6) had hired an attorney and going to file a law suit against the employer.

Feb4, 2015, employer provide timeline / summary of (b) (6), (b) (7)(C) performance issues. (exh. D-5)

Feb 6, 2015, WHI contacted employer, Ms. Lisa Morten, and informed her that the investigation had been completed, and reiterated the regulations regarding nursing mothers and the lunch break issue. Ms. Morten informed WHI that they had made a big sign that nursing mothers can hang it on the door when they're expressing milk, and she was sure no one would just pop-in again. Ms. Lisa Morten also assured that they would be in compliance with other applicable labors laws.

The employer was advised of the 16(b) and the possibility of the CMP. The complainant was notified of the result on Feb 6, 2015.

Publication provided: MW Poster, WH1282(HRG), WH1261(RK), WH1262(OT), WH1281(541 Exemptions), WH1312(HW), WH1330(CL), FS28D, FS73, FS44.

Recommendation:

I recommend this file be administratively closed.

Send correspondence to:

Overlake Hospital Medical Center
HR Dept.
1035 116th Ave NE
Bellevue, WA 98004

(b) (6), (b) (7)(C)

Wage Hour Investigator

X: _____