

# HEALTH LAW

## *Update*

NEWS FOR THE CLIENTS AND FRIENDS OF BASS, BERRY & SIMS PLC

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## Alert for Employers in the Home Health Industry

December 14, 2007

Employers in the home health industry should consider an audit of their pay practices in light of recent pay lawsuits filed against industry employers, including four such lawsuits in Pennsylvania, one of which resulted recently in a \$2.2 million settlement. These cases relate to whether industry employers have been properly paying home health aides (i.e., “companions” or “domestic services employees”).

Many employers in this industry are aware that in a recent ruling, the United States Supreme Court decided that many home health aides are exempt from the minimum wage and overtime requirements of the federal wage and hour law. However, the federal wage and hour laws are not the only laws that govern how employees must be paid. Each state has its own laws governing pay practices, and employers in each state must comply with both federal law and with the state law in question.

In Pennsylvania, for example, the exemption for home health aides is not as broad as the federal laws, and for this reason, industry employers in that state who believed they only had to comply with federal law – and not with the more stringent state law – are facing lawsuits. One of those lawsuits, relating to the payment of overtime to home health aides, including having to count certain “travel time” between clients as “hours worked,” has resulted in a \$2.2 million settlement.

Perhaps more importantly to some employers, these lawsuits are being filed with the assistance of union attorneys. In this manner, some unions are acting as advocates for the employees, prosecuting claims for them, as part of a strategy to organize the employees and become the employees’ bargaining agent.

If you are an employer in this industry, you should consider an immediate audit to determine whether your pay practices in the various states are in compliance with the laws applicable to you.

For more information, contact one of our labor and employment attorneys identified below or one of our healthcare attorneys, who can be found on our Web site.

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