



On-call Restrictions Did Not Entitle Nurses to Overtime Pay

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Two nurses were not entitled to overtime pay for the on-call restrictions posed by their work. While on-call, the nurses were required to carry a cell phone and pager, remain within 35 miles of Marinette, Wisconsin, return calls or pages within 15 minutes, and refrain from drinking alcohol.

Unity Limited Partnership is a non-profit partnership of three Green Bay area hospitals, which provides round the clock palliative and hospice care to patients in 12 northeastern Wisconsin counties. Nurses are required to work both regular and on-call shifts and are provided with the call schedule several months in advance. While on-call, nurses are compensated at a rate of \$2.00 per hour and also receive overtime pay at a rate of one and a half times their regular rate of pay if they actually work while on-call.

Patricia Roland and David Breecher, former nurses for Unity, sued alleging they were due overtime pay for all hours while on-call. Both nurses performed some work during about 90% of their on-call shifts. Although they were paid at overtime rates for the time actually worked when on-call, they were not paid at the overtime rate for time spent on-call when they did not work. Roland and Breecher averaged less than one call per 14-hour shift and many calls did not require them to respond in person.

Roland worked four to six shifts per month and claimed the on-call restrictions prevented her from doing household chores and going out to dinner with friends and family. She also claimed there were occasions while on-call when she made computer data entries concerning patients. Although Unity's policy required those entries to be made within a certain period after the patient visit or treatment, this did not have to be done during the on-call shift.

Breecher worked eight or nine shifts per month. He said there were occasions when calls were received while he was on-call which interrupted time he spent shopping with his wife and socializing with friends at a local bar. As a result, Breecher stopped engaging in social activities while on-call.



Under the Fair Labor Standards Act, employees who are “engaged to wait” or who are required to remain on call at the employer’s premises or so close to it that they cannot effectively use the time for their own purposes must be paid accordingly. However, an employee who is not required to remain at work but must leave work where he can be reached is not “engaged to wait,” but is instead, “waiting to be engaged” and is not required to be compensated as though they were at work.

The court noted this distinction does not require employers to compensate employees who are on-call as though they were at work merely because those employees are unable to pursue every personal pursuit they may desire. Instead, the focus is whether employees are able to use their on-call time away from work to effectively pursue some, but not necessarily all, personal pursuits. If so, the time may not be considered to be time at work.

In this case, the court accepted that these nurses may receive a number of calls at unpredictable hours and that responding would be burdensome and may limit their ability to perform some personal pursuits. However, the on-call requirements were not so restrictive to prevent the nurses from effectively using on-call time for many personal pursuits. Therefore, the nurses were not considered to be “engaged to wait” and Unity was not required to compensate them as though they were at work.

Providers who require their employees to work on-call, should ensure their requirements are not too restrictive to effectively prevent on-call employees from using their time effectively for personal pursuits. Providers may also consider establishing a call schedule well in advance and allow employees plan and reschedule their assignments at their convenience.

Roland v. Unity Ltd., Case No. 07-C-1103-WCG (E.D. Wis. Mar. 29, 2010).

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