



## **Provider Faces Class Action for Not Paying Overtime to IT Staff**

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Another case adds to an emerging trend of class actions targeting health care providers for alleged violations of state and federal wage and hour laws. This time, a California hospital allegedly misclassified its information technology (IT) employees as exempt from overtime pay.

On January 19, Shannon Yam, who has been an IT Operations Lead (IT-OP) at Kaiser Foundation Hospitals, Inc. since 2007, filed a complaint in federal court in San Diego on behalf of herself and other individuals currently or previously employed by Kaiser as an IT-OP or similarly situated position since January 19, 2006. Yam alleges the class of affected employees numbers more than 100 individuals who are entitled to compensatory damages, an equal amount of liquidated damages, interest, and attorney fees. The civil cover sheet Yam filed with her complaint demands payment of \$5 million.

The complaint alleges Kaiser committed an unlawful business practice in violation of California law by deceptively and falsely telling IT-OPs they were exempt from overtime, when Kaiser knew or otherwise should have known they were not exempt. Therefore, under both California and federal law, IT-OPs would be entitled to overtime pay at a rate of one and a half times their regular rate for hours worked over 40 during a work week. Kaiser also allegedly failed to provide IT-OP employees with 30 minute uninterrupted meal breaks and to provide pay statements of hours worked and the applicable rates of pay for the pay period as required by California Labor Code.

Kaiser operates over 30 hospitals in states including California, Hawaii and Oregon and delivers healthcare services to over 8.4 million individuals. In 2003, Kaiser announced a \$1.8 billion investment in technology including electronic medical records, electronic appointment booking, electronic prescription refills and referral requests. Kaiser hired IT employees to provide technical troubleshooting and desktop support as well as "MAC" (move, add change) computer work in support of its technology systems.



Yam alleges she and other IT-OPs worked “on the production side” and were required to perform on-call work 24 hours, seven days per week. Further, she alleges that when paged for technical support, IT-OPs were required to respond and begin working on resolution within 15 minutes. Additionally, if they were working on a “status bridge” matter, IT-OPs were required to get back on a status call every 30 minutes and if on a “technical bridge” matter, they remained on call for the duration. This limited their ability to engage in personal activities when not at work because of call interruptions.

Under California Labor Code, employers must furnish employees with pay statements showing the total hours worked unless they are salaried employees and are exempt from the overtime requirements. Under state and federal laws, employers must pay non-exempt employees pay at a rate of one and a half the regular rate for all hours worked over 40 during a work week. The complaint alleges that the statutory exemptions for executive, administrator, bona fide professional, and the computer professional exemptions did not apply. Unless an extension is obtained or a timely waiver of service was made, Kaiser must respond to the complaint allegations within 20 days.

This complaint is one among several in an increasing incidence of complaints against health care providers for wage and hour violations. Providers are strongly recommended to re-evaluate their pay practices and ensure that accurate records for time worked are maintained and that the legal requirements are met for all employees for whom an exemption is claimed.

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