CTSI
Serving Colorado's Counties

Technical Update

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Joint Employers of Nurse Assistants May be Liable for Overtime

A temporary nursing assistant working for a hospital on assignments from three local agencies was ruled to be an employee under the "joint employer" theory in Barfield v. New York City Health and Hospitals Corp (2nd Cir. Ct. App. 2008.) This case shows that hiring temporary employees, even from multiple referral agencies, can result in employer liability despite an intent to prevent an employer/employee relationship through the use of other agencies. The federal appeals court found that the hospital where the nurse worked had sufficient control over the nursing assistant and the work she did to be deemed her employer.

The FLSA defines "employer" as including "any person (other than a labor organization) acting directly or indirectly in the interest of an employer in relation to an employee and includes a public agency" 29 U.S.C. §203(d). Factors previously identified in this "economic reality" analysis include a) the power to hire and fire; b) the power to supervise and control; c) the ability to determine the method and rate of payment; d) and the power to create and store the workers' time records.

What This Means For Counties

Agencies using part time workers from other agencies should track those employees' hours carefully, restrict overtime hours for any other joint employers without written permission, and make sure that any overtime worked is properly reviewed, documented, and used by the employee under a designated central record keeping system.

For more information, contact CTSI at 303-861-0507.

800 Grant St., Suite 400
Denver CO 80203

County Technical Services, Inc.

303.861.0507
FAX: 303.861.2832