

# ALERT

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## LABOR AND EMPLOYMENT

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## **Pennsylvania Adopts FLSA's 8/80 Overtime Rule for Health Care Industry Employers**

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Pennsylvania has taken a major step toward making its overtime requirements for employers in the health care industry consistent with federal rules. On July 5, 2012, Governor Corbett signed into law H.B. 1820, which amends Pennsylvania's Minimum Wage Act to permit health care employers to pay non-exempt employees overtime for hours worked in excess of eight hours a day, and for hours in excess of 80 hours over a 14-day period (otherwise known as the 8/80 Rule). To be effective, employees and employers must agree on this payment scheme prior to the start of employment. Health care employers are those who are engaged in the care of "sick, aged, or mentally ill," 9 U.S.C. § 207(j), and include hospitals, nursing homes, and residential health care facilities, as well as other facilities that provide health care related services.

H.B. 1820 specifically references the federal Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 207(j), and its accompanying regulations, leaving no doubt that Pennsylvania law now is consistent with federal law, which created the 8/80 Rule. Prior to the implementation of H.B. 1820, Pennsylvania courts had held that the 8/80 rule violated Pennsylvania's Minimum Wage Act, and that health care employers were bound by the 40 hours per week overtime threshold. This inconsistency with federal law led to

compliance problems, and health care employers had seen a barrage of class-action lawsuits over the impermissible use of this rule.

Pennsylvania's new 8/80 Rule went into effect on July 5, 2012. The new provisions do not necessarily override the overtime provisions of collective bargaining agreements, but non-union employers immediately may begin to change their practices related to this rule. Over time, this amendment to Pennsylvania law will have a profound impact on the way many health care employers schedule and compensate their employees. Health care employers now will have greater flexibility to schedule their workers in a manner that reflects how health care employers function best. It also should reduce litigation as Pennsylvania's state rules will be consistent with the federal 8/80 Rule.

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*To discuss any questions you may have regarding the issues discussed in this alert, or how they may apply to your particular circumstances, please contact:*

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