

Eli's Hospice Insider

Hospice News: DOL Wage & House Division Offers Opinion On Aide Compensation

If you don't want to risk a punishing lawsuit from your aides about their compensation, you may want to check out a new opinion letter from the feds.

In the Dec. 21, 2018, letter, the **Department of Labor** Wage & Hour Division reviews a home care provider's payment methodology for its home health aides.

The particulars: The agency says that it pays aides for the time they spend with clients, but not their travel time by "multipl[ying] an employee's time with clients by his or her hourly pay rate for such work. The employer then divides the product by the employee's total hours worked, which includes both the client time and the travel time." Then the agency makes sure that amount is above minimum wage.

The DOL puts its stamp of approval on the methodology for minimum wage purposes. "Although an employee's average hourly pay rate may vary from workweek to workweek, the employer always ensures that the average hourly pay rate exceeds the FLSA's minimum wage requirement for all hours worked," the opinion letter says.

However, the DOL warns that "the employer's compensation plan ... may not comply with the FLSA's overtime requirements. If the employer always assumes a regular rate of pay of \$10 per hour when calculating overtime due," as the agency said in its letter, "then the employer will not pay all overtime due to employees whose actual regular rate of pay exceeds \$10 per hour," DOL cautions "Neither an employer nor an employee may arbitrarily choose the regular rate of pay; it is an 'actual fact' based on 'mathematical computation,'" the letter says.

"The compensation plan does comply with the FLSA's overtime requirements for all employees whose actual regular rates of pay are less than \$10 per hour, as an employer may choose to pay an overtime premium in excess of the statutorily required amount," adds the letter at www.dol.gov/whd/opinion/FLSA/2018/2018_12_21_28_FLSA.pdf.