

Minimum Wage Opinion Letter 03.14.11

Re: Respiratory therapists and overtime

I am writing in response to your request, on behalf of your client, for this Office's written opinion regarding the applicability of the Massachusetts Minimum Fair Wage Law, M.G.L. c. 151, §1 et seq. Specifically, you have asked if the Massachusetts Overtime Law, G.L. c. 151, §1A, recognizes the exemption from payment of overtime for respiratory therapists under the professional employee status included in the federal Fair Labor Standards Act (FLSA) regulations. *See 29 C.F.R. §541.300.*

It is my understanding that your client was working as a respiratory therapist for a private company and does not perform any services as a respiratory therapist in a hospital, nursing home, infirmary, or rest home. Accordingly, the exceptions to the overtime provision set forth in G.L. c. 151 §1A (16) are not applicable in this case. [\[1\]](#)

The Massachusetts Overtime Law includes a provision which exempts "bona fide executive, or administrative or professional person[s]" from the requirement for overtime compensation. M.G.L. c. 151, §1A(3). The Massachusetts Minimum Wage Regulations were amended in 2003 to provide that "[t]he terms 'bona fide executive, or administrative or professional person' in M.G.L. c. 151, §1A(3), shall have the same meaning as set forth in Part 541 of Title 29 of the U.S. Code of Federal Regulations." *455 C.M.R. §2.02(3)*. The intent of this regulatory change was to clarify the meaning of these terms under state law, in order to encourage employer compliance and strengthen enforcement.

In 2006, the U.S. Department of Labor, Wage and Hour Division concluded that a respiratory therapist does not qualify for the "learned professional" overtime exemption of Title 29 CFR §541.300. *See US DOL Opinion Letter FLSA 2006-26*. ("US DOL Letter".) The US DOL Letter, recognizing that respiratory therapists may be licensed and accredited, nonetheless determined that such workers are not exempt from payment for overtime work under the FLSA. In making this determination, the US DOL Letter provides as follows:

An individual may work in 'a field of science or learning' but still not meet the requirements for the learned professional exemption because the *occupation* does not require knowledge 'of an advanced type ... customarily acquired by a prolonged course of specialized intellectual instruction.' *See 69 Fed. Reg. 22,149*. The proper focus of the inquiry is upon whether all required elements have been satisfied for the particular occupation, not upon any job title or 'status' that an individual employee within an occupation might have or on an individual employer's specified hiring preferences. Rather, only occupations that *customarily* require an advanced specialized degree are considered learned professional fields under both the old and new versions of the regulations. Thus, the learned professional exemption is not available for the respiratory therapist because that occupation does not require knowledge of an advanced type that is customarily acquired by a prolonged course of specialized intellectual instruction.

We find the US DOL Letter dispositive of the issue in this instance. Accordingly, under the circumstances described in your letter, a private company employee working as a respiratory therapist is not exempt from payment of overtime under the Massachusetts Minimum Fair Wage Law.

I hope this information has been helpful. If you have any further questions, please feel free to contact me.

Sincerely,
Patricia A. DeAngelis
Acting Deputy Commissioner and General Counsel

[1] These exceptions include persons working "in a hospital, sanatorium, convalescent or nursing home, infirmary, rest home or charitable home for the aged." See c. 151, § 1A(16).