

LEGAL RAMIFICATIONS OF PER VISIT PAY

Payment of home care employees on a “per visit” basis is a common form of compensation in home care.

“Per visit” compensation refers to a lump sum payment as payment for all activities in connection with a visit to the patient. It is a compensation not only for the time involved in direct patient care but for travel time, charting, and communication with the patient’s family, physician and other health care providers as well.

Per visit payment has often proved to be an attractive pay arrangement for all concerned. For the home health agency, it encourages and rewards increased productivity in terms of the number of visits completed in a set time period. For the patient and public, the increased productivity assists in reducing the costs of health care. For the employee, it provides an opportunity for income substantially in excess of what would normally be available if the employee were paid on a salary basis or at an hourly rate of pay.

Unfortunately, however, many home health agencies have adopted per visit pay arrangements without being aware of the legal ramifications and risks involved. As a result, what may be an attractive pay arrangement on its face can lead to substantial risk exposure in practice.

This article will identify the most common, significant legal implications which should be considered when employees are paid on a per visit basis.

THE IMPORTANCE OF DEFINING A VISIT

The starting point in a per visit compensation arrangement is to define precisely what the per visit pay is for. Is it for only the time involved in direct patient contact? Or, is it also in payment for travel time, charting, etc.? In the absence of a clear statement in this regard, enforcement authorities can take the position that a per visit payment was only for the time in direct patient contact and the employee is still entitled to pay for other types of working time, such as travel time, charting time, etc.

An agency’s written policies should contain a clear definition of what is included in a per visit payment and what is not. For example:

(1) Per Visit Compensation. The per visit compensation is a lump sum payment in compensation for all time involved in completing the “visit” to an Agency patient. For this purpose, the visit includes all of the following time: preparation time; participation in developing the plan of treatment; travel to the patient’s home or place of residence and return; the actual patient contact; completion of all charting and related paperwork; completion of

timesheet; telephone time and conferences with the patient's family or other individuals concerning the patient; and, turning in properly completed information and paperwork.

(2) Lump Sum Compensation. Lump sum compensation will be paid to an employee for time worked in orientation, staff meetings, inservices, attending continuing education when approved by the Agency, and for other time not included within the per-visit payment. The Agency has established specific lump sum amounts which are paid for each of the types of work not included in the per visit compensation.”

The preceding is simply an example. Each home health agency usually has its own definition and terminology. Furthermore, as discussed later in this article, paying extra for work not included in the per visit payment (the lump sum compensation in the preceding example) may negate the argument that certain employees who are paid on a per visit basis should be exempt from overtime pay.

OVERTIME AND MINIMUM WAGE

The most significant issue arising out of a per visit pay arrangement is compliance with the minimum wage and overtime pay requirements of the federal Fair Labor Standards Act (FLSA).

Agencies which are subject to the FLSA must pay their covered employees the minimum wage required by law and overtime pay at a rate of one and one-half (1 ½) time the employee's regular hourly rate for hours worked in excess of forty hours in a workweek. Failure to do so can result in substantial liability for not only the unpaid wages but for significant penalties and the employee's attorney's fees as well.

The FLSA, however, contains a number of exemptions for particular types of employees. The most commonly used exemptions for all employers, including home health agencies, are the so-called “white collar” exemptions for executive, administrative and professional employees. If the requirements for one of the white collar exemptions for executive, administrative and professional employees are met, the employee is exempt from both minimum wage and overtime pay (i.e., she or he is an “exempt employee”). If the requirements of the exemption are not met, the employee is entitled to receive at least minimum wage and overtime pay for hours worked in excess of forty hours in a workweek (i.e., a “nonexempt employee”).

The minimum wage and overtime pay implications of per visit pay differ for employees an agency believes are exempt from minimum wage and overtime pay versus those who are nonexempt.

EXEMPT EMPLOYEE ISSUES

Each of the white collar exemptions has specific criteria which must be met before the employee is exempt, and the burden is upon the employer (not the employee) to prove the requirements for the exemption. For example, educational background is an important requirement for the professional exemption. A registered nurse performing professional nursing duties normally will qualify for the professional exemption provided she or he is paid on either a salary or a fee basis. A licensed practical nurse does not qualify for that exemption even though she or he is paid on a salary or fee basis. The difference is because of the education required to become a registered nurse versus that required to become a licensed practical nurse.

One requirement for each of the white collar exemptions concerns how the employee is paid. For the professional exemption, the employee must be paid on either a “salary basis” or a “fee basis”. This leads to the primary legal issue concerning per visit payment of a registered nurse – whether or not she or he is entitled to overtime pay. The answer to that question primarily depends upon whether or not “per visit” payment of a registered nurse constitutes “fee basis of payment” for purposes of the professional exemption from minimum wage and overtime pay under the FLSA.

“Fee basis” refers to the payment of an agreed sum for a single job which is unique and regardless of the time required for its completion. The applicable FLSA regulation states:

“...these payments in a sense resemble piece work payments with the important distinction that generally speaking, a fee payment is made for the kind of job which is unique rather than for a series of jobs which are repeated an indefinite number of times, and for which payment on an identical basis is made over and over again. Payments based on the number of hours or days worked and not on the accomplishment of a given single task are not considered payments on a fee basis...”

The complete FLSA regulation addressing what is meant by fee basis of payment is set forth in Table I at the end of this article.

Whether or not per visit payment is fee basis of payment for purposes of the professional exemption increasingly is being questioned by both the Wage and Hour Division during audits of home health agencies and by employees in private lawsuits against agencies.

WAGE AND HOUR OPINIONS

Opinions of the Wage and Hour Administrator

There are two formal opinions by the Administrator of the Wage and Hour Division addressing what is fee basis of payment.

The first occurred in 1982. There, the Administrator of the Wage and Hour Division concluded a registered nurse would *not* be compensated on a “fee basis” if she were paid a certain amount for each stress test evaluation she performed. Although the Administrator recognized the information in the request for opinion did not give sufficient detail concerning the stress test evaluation and other work duties performed by the nurse, the Administrator stated:

“...it appears that the RN is performing a series of jobs repeated an indefinite number of times for which identical payments would be made over and over again. Thus, such an employee would not be compensated on a salary or fee basis within the meaning... of the regulations”.

The second occurred in 1998 and expressly concerned per visit pay of registered nurses in home care. There the Administrator of the Wage and Hour Division concluded that registered nurses were *not* paid on a fee basis since the work they performed during “admission” and “regular” visits to patients was repetitive and unoriginal. The registered nurses performing home health services received a flat fee of \$40.00 for the admission visit, when the patient is first admitted to the home health program and a flat fee of \$26.50 for a regular (non-admission) visit. Simply

paying two different fees, depending on the task performed, is not sufficient to meet the uniqueness requirement of the fee basis regulation.

The Administrator reasoned as follows:

“...the use of these professional occupations (singers, artists and illustrators/writers) to demonstrate this point suggest to us that the character or nature of the job itself must be unique, and not simply that the performance of the job vary from day to day. While we recognize that the nurse will necessarily make professional judgments and assessments based on his or her skills providing patient care on each visit, such work is not unique in character because unlike work performed by a singer, artist, or illustrator, the work performed by the nurse is generally repetitive and not original in character.”

Office of Enforcement Policy

The Office of Enforcement Policy of the Wage and Hour Division has given three opinions stating that per visit payment to registered nurses providing home health care is not fee basis of payment for purposes of the professional exemption.

In a letter dated November 9, 1998, the Office of Enforcement policy expressed its opinion that registered nurses who are paid on a per visit basis are not paid on a fee basis within the meaning of the professional exemption and, consequently, are entitled to overtime pay.

Similarly, in letters dated September 3, 1999 and October 19, 1999, the Office of Enforcement policy again expressed its opinion that registered nurses who are paid on a per visit basis are not paid on a fee basis within the meaning of the professional exemption. In the October letter, the Office of Enforcement policy stated:

“It further provides that a fee payment is made for the kind of job which is unique rather than for a series of job which are repeated an indefinite number of times and for which payment on an identical basis is made over and over again. We recognize that aspects of home visits will vary. For example, a nurse will perform different tasks depending upon whether the patient has a heart condition, diabetes, or lung cancer. However, variations between visits are not synonymous with the visits being unique. Moreover, the history of the fee basis regulation demonstrates that fee basis of payment is not a predetermined amount paid regularly over a long period of time. Payment cannot be said to have occurred on a fee basis where payment is made for a series of jobs repeated a number of times and for which payment on an identical basis is made over and over again. The fact that the employees in question are paid the same predetermined sum for each visit is a strong indication that the visits are not unique.”

Court Decisions

Two court decisions have been rendered concerning the exempt status of registered nurses who were paid on a per visit basis. One court concluded the per visit pay was fee basis of payment (i.e., that the nurses were exempt and not entitled to overtime pay) while the other court concluded it was not (i.e., the nurse was nonexempt and was entitled to overtime pay). Oddly, the two decisions both came from the same court, the United States District Court for the Northern District of Ohio, but from different judges.

Fazekas v. Cleveland Clinic Health Care Ventures, Inc.

The first decision was rendered in December 1998, *Fazekas v. Cleveland Clinic Health Care Ventures, Inc.*, 29 F. Supp.2d 839 (N.D. Ohio 1998).

In *Fazekas*, the court held that registered nurses who were paid an agreed upon lump sum amount for each visit completed were paid on a fee basis within the meaning of the FLSA's professional exemption and, consequently, were exempt from the FLSA's minimum wage and overtime pay requirements. In doing so, the court found that the jobs the nurses performed were "unique". The court stated:

"The nurses testified that their jobs required them to assess each individual patient's circumstances and develop and implement a plan of care unique to each patient. They testified that in performing this job, they were required to assess a variety of factors, including the particular medical condition of each patient, the attending physician's instructions, the patient's home and family situation and the patient's emotional or mental status. ... The evidence in this case indicated that the plaintiffs were responsible for applying their professional skills and judgment to each unique patient situation. They were not ... merely performing a "set job" over and over again."

The nurses appealed to the United States Court of Appeals for the 6th Circuit. The Court of Appeals upheld the District Court's decision, *Fazekas v. Cleveland Clinic Health Care Ventures, Inc.*, 204 F.3d 673 (6th Cir. 2000). The Court stated:

"We conclude that the district court was correct in finding that the defendant in this case was engaged in a "bona fide...professional capacity" pursuant to the Department of Labor regulations, both because the plaintiffs duties required advanced knowledge and discretion and because they were paid on a fee basis, as that term has been interpreted by the Administrator for the Department's Wage and Hour Division. In other circumstances, however, the work of nurses performing home health care visits may indeed become merely "a series of jobs which are repeated an indefinite number of times,"... and in such cases those nurses would not qualify for the professional exemption."

Elwell v. University Hospital Home Health Care Services

The second decision also began in the United States District Court for the Northern District of Ohio, *Elwell v. University Hospital Home Health Care Services*, 76 F Supp 2d 805 (N.D. Ohio 1999).

Elwell concerned a registered nurse who was paid on a per visit basis for patient care visits and on an hourly basis for attendance at required or mandatory meetings and while serving in on-call duty. Home visits that required an IV and that extended over two hours resulted in hourly payment for the time over two hours.

The District Court held that she was not paid on a "fee basis" within the meaning of the FLSA's professional exemption and, consequently, was entitled to overtime pay.

There were two reasons for the court's conclusion in this regard. First, the court observed that Elwell was paid hourly in addition to the per visit payment and the fee basis of payment regulation does not "acknowledge payment of extra pay for extra work." The court stated,

“...It appears that payment was actually based on the number of hours worked and not on the accomplishments of a single give task as required by {the fee basis regulation}.”

Second, the court held that Elwell’s services were not unique:

“...Although Elwell made professional judgments and assessments based on her skills, the character or nature of the job was not unique. Her performance varied from day to day but she was basically doing the same nursing care depending on the needs of the patient. For example, the care for patients having the HIV syndrome would essentially be the same although the care needed for individual HIV patients may be different. The performance of the job may differ from day to day but its character is not unique when compared with the examples in {the fee basis regulation.}”

In finding Elwell’s services were not unique, the court pointed to an April 27, 1998, letter of the Wage and Hour Division’s Administrator (mentioned above) which stated that, in that Administrator’s opinion, payment on a “per visit” basis in not fee basis of payment.

The District Court in *Elwell* distinguished the *Fazekas* case stating:

“The present case is distinguishable from the *Fazekas* case because of its hourly payments and...this court’s finding that Elwell’s services were not unique.

The home health agency appealed to the United States Court of Appeals for the Sixth Circuit, *Elwell v. University Hospitals Home Health Services*, 276 F.3d 832 (6th Cir 2002). On appeal, the nurse conceded that her job was “unique”. However, she argued that the agency’s compensation plan, which combined per visit fee pay with hourly compensation, did not qualify as fee basis because it tied compensation, at least in part, to “the number of hours or days worked and not on the accomplishment of a given single task.”

The Court of Appeals agreed, stating:

“...Although Elwell was paid on a strict fee basis for most of her required job duties, including most of her patient visits, she was also paid on an hourly basis for some duties, including infusion visits that lasted longer than two hours, on-call duty, in-service training, and required staff meetings. ...such a hybrid plan does not qualify as a fee basis arrangement.”

It distinguished *Fazekas* by saying:

“...because the home health care nurses in *Fazekas* were paid solely on a fee basis regardless of the number of hours spent on each of their visits and were never paid on an hourly basis for any of their duties, the *Fazekas* panel did not address the central issue in this case, which is whether an employee who is paid on both a fee and an hourly basis may be considered a professional employee exempt from the overtime provisions of the FLSA. Consequently, the decision in *Fazekas* does not control the outcome of this case. Because University did not compensate Elwell on a fee basis, Elwell is not an exempt professional under the FLSA, and the district court properly awarded ...judgment to Elwell.”

Bottom line, the hourly pay meant Elwell was entitled to overtime pay and the court awarded her back pay of \$25,478, attorneys fees of \$49,884, and directed the trial court to consider her claim for liquidated damages.

THE CURRENT SITUATION

At best, the current situation is rather confusing and fluid:

- Two opinions in the same federal circuit, the 6th Circuit, have reached opposite conclusions concerning whether or not per visit pay is fee basis of payment for purposes of the FLSA's professional exemption.
- One judge has clearly held that paying hourly for extra work in addition to the per visit pay means the nurse is not paid on a fee basis for purposes of the FLSA's professional exemption.
- The Wage and Hour Division can be expected to take the position that: (1) per visit pay does not constitute fee basis of payment for purposes of the professional exemption; and, (2) a registered nurse paid on a per visit basis is entitled to overtime pay for hours worked in excess of 40 in a workweek.
- The real battleground appears to be over whether or not a nursing visit is "unique" within the meaning of the fee basis of payment regulation. In Fazekas, the court found they were; in Elwell the court found they were not.

RAMIFICATIONS FOR YOUR AGENCY

The question of whether or not per visit pay of a registered nurse constitutes "fee basis" of payment for purposes of the professional exemption from minimum wage and overtime pay under the FLSA remains unresolved and ultimately will need to be decided through continued litigation.

If the courts ultimately find that per visit pay is "fee basis" of payment and the professional exemption applies, the registered nurses will be exempt from minimum wage and overtime pay under the FLSA; if, instead, per visit pay is found to not constitute "fee basis" of payment, the professional exemption is lost and the nurses will be entitled to receive at least minimum wage and overtime pay.

ASSESSING YOUR AGENCY'S EXPOSURE

If an agency pay its registered nurses on a per visit and does not pay the nurses overtime pay, the potential exposure in the event of a government audit is for the unpaid overtime pay for the past two years plus an equal amount in damages. In the event the government believes the violation was intentional, back overtime pay and damages could be sought for three years along with civil monetary penalties. As a practical matter, however, it is unlikely the government would view the violation as being intentional. The most probable liability would be for overtime pay for the past two years and an agreement to pay overtime pay in the future; usually, the government does not seek damages.

In the event the issue should arise as a result of a private suit by an employee seeking overtime pay (rather than by government audit), the potential liability is the same plus the employee can recover attorney's fees. The most probably exposure is back overtime pay for two years, plus an equal amount in damages, plus attorney fees.

The potential liability for an individual agency may be relatively small or extremely large depending upon how many hours a week its registered nurses work each workweek. In order to determine what it wants to do in light of the per visit pay issue, an agency should determine, at least approximately, what monetary liability it is facing in the event a court concludes its registered nurses who are paid per visit pay are entitled to overtime pay. This involves three steps:

(1) First, for each registered nurse paid on a per visit basis who has not been paid overtime pay, determine the workweeks during the past two years in which that nurse worked in excess of forty hours in the workweek (the risk is for unpaid overtime pay which only arises if the nurse worked more than forty hours in the workweek). If the nurse did not work over forty hours in a workweek, no overtime pay is due for the workweek. In other words, even if registered nurses paid on a per visit basis are entitled to overtime pay, if they rarely work over forty hours in a workweek, the liability exposure would seem to be relatively small.

(2) Second, for each of the workweeks in which the registered nurse worked overtime, calculate the overtime pay she or he would be entitled to if she or he is found to not be exempt. This is equal to one and one-half (1 ½) times her or his regular hourly rate of pay that workweek for each hour worked over forty that workweek. Assuming the nurse receives no other remuneration during the workweek, her or his regular hourly rate of pay that workweek is calculated by adding together all the per visit pay that workweek and dividing by the total hours worked the workweek. The nurse is then entitled to receive one-half (1/2) that amount for each hour worked over forty (the straight time portion of the overtime pay has already been paid through the per visit payment). Because the total amount of per visit pay and hours worked can change each workweek, this calculation must be done for each workweek in which the nurse worked more than forty hours.

An example of the type of the regular rate calculation is set forth in Table II at the end of this article.

(3) Third, add together all of the back overtime pay from the calculations. The result is the basic amount the government probably would seek in an audit. In the event of private suit, damages and attorney's fees also probably would be sought by the suing employee.

OPTIONS AVAILABLE

Because the apparent path to resolution of the per visit and overtime pay issue is to be continued litigation, the options available essentially flow from how much risk an agency is willing to assume. The fundamental question is whether or not per visit pay of registered nurses is important enough to an agency to risk litigation, possible back overtime pay, damages, and employees' attorney fees. If not, then the agency probably will want to move to another method of compensation rather than becoming another "test case".

If an agency is willing to take the risks of per visit pay of registered nurses, then several basic options or combinations of options are available:

(1) Continue per visit pay without paying overtime pay but manage schedules to avoid the nurses working more than forty hours in a workweek.

This approach manages the risk by avoiding overtime in the first place.

(2) Continue per visit pay but pay overtime pay for all hours worked over forty.

Under this approach, the employees would be treated as being entitled to overtime pay. Provided the overtime pay is properly calculated, no additional liability would result for future workweeks.

(3) Continue per visit pay without payment of overtime pay and with no additional payment for time spend in in-services, on-call, etc.

This, of course, confronts the issue head on – does per visit pay constitute fee basis of payment for purposes of the professional exemption? If challenged in that regard, the agency should expect that it will need to litigate the issue.

(4) Continue per visit pay with hourly payment for time not included in the per visit payment.

This also confronts the issue head on, but the hourly payment will be a problem because the regulations refer to fee basis of payment as not being based on the number of hours worked. Indeed, this was one of the reasons the court in *Elwell v. University Hospital Home Health Care Services* held the nurse was not paid on a fee basis and was entitled to overtime pay. Because of this, this approach is not recommended.

(5) Continue per visit pay with lump sum payments for each activity not included in the per visit payment.

This also confronts the issue head on, but still is a problem because the nurse is not being paid purely on a per visit basis. Still, by using lump sum payments, payment based on hours worked are avoided. Actually, that is the only advantage to this approach – it avoids anything being paid based on an hourly rate. Given the court’s reasoning in *Elwell v. University Hospital Home Health Care Services*, however, the additional payments could led to a court concluding the nurse is not exempt and is entitled to overtime pay.

(6) Pay a salary plus per visit payment.

This avoids the fee basis of payment issue entirely by changing the compensation structure to be a salary with a per visit bonus for each visit made over a stated minimum. For example, paying the nurse \$400 per week with a per visit payment made for every visit over ten in the workweek. Provided the salary meets the law’s requirements for “salary basis of payment,” the registered nurse would be exempt as a professional employee paid on a salary basis.

A CAVEAT

Obviously, the manner in which an agency responds to the back overtime pay exposure of per visit pay of registered nurses can depend upon many factors including the degree of risk with

which it feels comfortable and its financial resources to meet any back pay liability and monetary penalties. If an agency decides to continue per visit payment, it should be sure that all facts, policies and procedures of the agency fully support its legal position. Do obtain legal advice in determining how to proceed.

NONEXEMPT EMPLOYEES

As mentioned earlier, several requirements must be met before an employee falls within the professional exemption from minimum wage and overtime pay. Only one of those requirements concerns how the employee is paid, i.e., on a salary or a fee basis. For example, a licensed practical nurse or a home health aide may be paid on a salary or per visit basis but, because they do not meet the educational requirements for the professional exemption, they clearly are still entitled to overtime pay (unless, of course, they fall into one of the other exemptions from overtime pay).

In other words, merely paying a nonexempt employee on a per visit basis does not avoid the need to pay the employee overtime pay for all hours worked over forty in a workweek. Nor does it avoid the need to maintain the records required by the FLSA concerning the employee and the hours she or he works each workweek. Not only do FLSA regulations require those records to be kept, the records of hours worked is necessary to properly calculate the employee's regular hourly rate for overtime pay purposes.

When a nonexempt employee is paid on a per visit basis, it is very important to be sure the employee's regular hourly rate is properly calculated each workweek. If it is not, the employee will not be paid the correct amount of overtime pay. The way to calculate the regular rate is the same as stated above in the second step for assessing an agency's exposure and as is illustrated in Table II at the end of this article. That example assumes the employee receives no remuneration other than the per visit pay; if that is not the case, the calculation could be different.

IMPORTANCE OF STATE LAW

As an agency considers how it wants to proceed concerning per visit pay, it also must check the requirements, if any, of the state(s) in which it operates. Just because the registered nurse may be exempt under the federal FLSA does not mean she or he is exempt under a similar state minimum wage or overtime pay law. In minimum wage and overtime pay matters, state law must always be consulted in addition to the FLSA.

OTHER RAMIFICATIONS

The minimum wage and overtime pay ramifications are by far the most significant concerns when dealing with per visit pay compensation arrangements. There are certain other issues, however, which should be noted briefly.

First, if the employees who are paid on a per visit basis also are entitled to paid time off, an agency probably will need to reconsider its paid time off policies. Policies which are written for hourly employees usually do not take into account a per visit pay arrangement. If an employee is paid on a per visit basis, how is the paid time off accrued and charged against? What amount of pay does an employee receive when she or he takes time off? How is the case equivalence of a certain amount of paid time off calculated?

Second, if the per visit employees are entitled to participate in an agency retirement plan, generally, the agency will need to know the number of hours the employee works to determine eligibility to participate. For retirement plan purposes, it may be permissible to estimate a certain amount of time per visit, but, estimates are not acceptable for minimum wage and overtime pay compliance. Minimum wage and overtime pay compliance requires records of actual hours worked.

Third, there is the issue of malpractice exposure. Per visit pay arrangements are usually adopted as a way to encourage employee productivity. To maximize their compensation, some employees can become too “productive” completing many visits but spending little time with each patient. This could then become evidence in a malpractice suit if an employee hurried through a visit such that is caused harm to a patient. As a result, some agencies have begun to require per visit employees to spend at least a certain minimum amount of time with the patient during each visit.

Finally, in light of changing reimbursement methodologies, consider whether or not per visit pay continues to be as advantageous as it once was. Does it encourage and reward the conduct needed under Medicare PPS? Managed care contracts?

CONCLUSION

In adopting or continuing per visit pay, an agency must understand the legal ramifications and risks of that type of pay arrangement. Failure to do so not only may result in inadvertent violation of wage payment law but could mean the agency’s other personnel policies are not written appropriately for the per visit pay arrangement. All compensation structures have legal and practical ramifications. Be sure you know those ramifications as you evaluate what you want to do in your agency.

TABLE I

FLSA FEE BASIS OF PAYMENT RULES

(Effective August 23, 2004)

§ 541.605 Fee basis.

(a) Administrative and professional employees may be paid on a fee basis, rather than on a salary basis. An employee will be considered to be paid on a “fee basis” within the meaning of these regulations if the employee is paid an agreed sum for a single job regardless of the time required for its completion. These payments resemble piecework payments with the important distinction that generally a “fee” is paid for the kind of job that is unique rather than for a series of jobs repeated an indefinite number of times and for which payment on an identical basis is made over and over again. Payments based on the number of hours or days worked and not on the accomplishment of a given single task are not considered payments on a fee basis.

(b) To determine whether the fee payment meets the minimum amount of salary required for exemption under these regulations, the amount paid to the employee will be tested by determining the time worked on the job and whether the fee payment is at a rate that would amount to at least \$455 per week if the employee worked 40 hours. Thus, an artist paid \$250 for a picture that took 20 hours to complete meets the minimum salary requirement for exemption since earnings at this rate would yield the artist \$500 if 40 hours were worked.

TABLE II

PER VISIT PAY REGULAR RATE CALCULATIONS

Assuming a nurse is paid \$30 per visit per makes 25 visit involving 42 hours of work during a workweek, the regular rate and overtime pay calculation would be as follows (Note: This example assumes the only remuneration the nurse receives is the per visit pay. If she or he receives any other remuneration, such as on call pay or hourly pay, the calculation would be different).

The regular rate formula is:

Total remuneration (except statutory exclusions*) divided by total hours worked

Total Remuneration:

25 visits times \$30 = \$750.00

Total Hours Worked:

42 hours

Regular Rate Calculation:

\$750.00 divided by 42 hrs = \$17.86/hr.

Pay Calculation:

Per visit pay of \$750.00

PLUS: Overtime Pay of \$17.86 (1/2 RR for 2 hours)

EQUALS: Total Compensation of \$767.86

* The FLSA permits certain types of remuneration, such as expense reimbursement and vacation pay, to be excluded from the calculation. The full listing of permitted exclusions is contained in the FLSA.

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