

PUBLICATION

Uncompensated "Off-the-Clock" Work Time Nets Call Center Nurses a \$6.2 Million Settlement

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Late last year, more than 1,300 "advice nurses" working at call-in centers providing answers to patient health care questions for Kaiser Permanente and Permanente Medical Group filed a class action lawsuit for unpaid wages and overtime compensation in federal district court in California. The nurses claimed that their job required them to use certain computer software programs and applications that had lengthy log-on and log-off processes at the start and end of each work day and when leaving for and returning from meal breaks. According to the nurses, the log-on and log-off processes took 10 to 30 minutes each day – time for which they were not compensated. The nurses filed suit against Kaiser, seeking compensation for this "off-the-clock" work at their regular rates and, in some cases, at their overtime rates, under the Fair Labor Standards Act and California wage and hour law. *Brown v. Permanente Medical Group, Inc., No. 3:16-cv-05272 (N.D. Cal.)*.

Wage and hour law requires that covered non-exempt employees receive at least the minimum wage for all "hours worked," which includes all time an employee must be on duty, or on the employer's premises or at any other prescribed place of work. The lawsuit here asserted that Kaiser's failure to pay for the off-the-clock time spent logging on and off the computer violated the U.S. Department of Labor guidance, "[Call Centers under the Fair Labor Standards Act \(FLSA\)](#)." In that guidance, the DOL advised employers with call center employees to pay for work "from the beginning of the first principal activity of the workday to the end of the last principal activity of the workday," which includes "starting the computer to download work instructions, computer applications, and work-related emails."

The lawsuit appears to be reaching an end, as the parties have negotiated a \$6.2 million settlement which just recently received preliminary approval from the court. The proposed settlement calls for each of the 1,325 estimated class members who worked in a Kaiser call center since September 2012 to be allocated settlement shares, calculated based on actual hours worked. The settlement also includes \$75,000 for penalties under the Private Attorneys General Act, \$10,000 for each of the three class representatives, \$1.95 million in attorneys' fees and costs, and \$30,000 in administrative costs.

In granting the preliminary approval, the court stated that class members should be notified of the settlement through mailers sent to their home addresses and email to their work and, where possible, their personal email accounts. The court also requested that all relevant materials be posted on a settlement website. Finally, the court suggested that all money from uncashed settlement checks be pooled and redistributed among the class members.

The Kaiser class action suit is a good reminder of how important it is that employers have a practical understanding of the obligations placed on their workforce. While a well-drafted and well-communicated policy prohibiting off-the-clock work is necessary, such a policy likely would not have prevented the outcome here. The employer clearly did not have working knowledge of the impact the logging-on and logging-off processes had on its employees, many of whom lost time from their meal breaks or stayed after the work day ended due to the additional time required to gain access to the Kaiser software programs and applications. An employer should work to understand the everyday complexities of performing each position held by each of its employees to ensure that its compensation practices comply with state and federal wage and hour laws.

