In a recent study, the United States Government Accountability Office found that the Department of Labor’s Wage and Hour Division “frequently responded inadequately to complaints, leaving low wage workers vulnerable to wage theft.” United States Government Accountability Office, Department of Labor Wage and Hour Division’s Complaint Intake and Investigative Processes Leave Low Wage Workers Vulnerable to Wage Theft (Mar. 25, 2009) (“GAO Report”). The study uncovered delays in investigating complaints, failures to record complaints in the Wage and Hour Division’s database, failures to use available enforcement tools, failures to follow up on employers’ agreements to pay, and a poor complaint intake process. See GAO Report, p.8.

In response to the GAO Report, Hilda L. Solis, the Secretary of Labor, vowed to take action. In particular, the Department of Labor’s Wage and Hour Division plans to hire 250 additional investigators and to refocus on its enforcement responsibilities.

Add this to the fact that collective actions under the Fair Labor Standards Act (FLSA) have already skyrocketed according to a study by the Federal Judicial Center, and you have an environment in which employers must be vigilant about ensuring that their payroll practices comply with federal and state law. Both public sector and private-sector employers have been targeted in FLSA collective actions and state law wage and hour class actions. Certain industries, including retail, financial services, and manufacturing, have seen an onslaught of FLSA actions concerning various pay practices.

Hospitals and other health care facilities have also been targeted. For example, a court recently conditionally certified a collective action brought by current and former employees against a health system in Pennsylvania alleging that it had enacted an unlawful meal break deduction policy. Similarly, employees have sued a Memphis-based hospital system alleging that the hospital violated the FLSA by failing to pay employees for work performed before and after their shifts and by automatically deducting time for lunch breaks from employees’ paychecks even though employees actually performed work during their lunch breaks. A hospice care provider’s employees alleged that it willfully violated federal law by shaving overtime hours and requiring off-the-clock work.

FLSA collective action suits can lead to costly and protracted litigation with the potential for large verdicts and the recovery of attorneys’ fees for plaintiffs’ lawyers. Consequently, employers should take the time to examine whether their compensation practices comply with the FLSA. Even small mistakes in pay practices or employee classifications can result in potentially large recoveries if many employees are affected by the error.

Generally, the FLSA requires that employees be paid the current minimum wage, and that employees who are not exempt under
Greetings to all!

Another very successful Summer Institute in Louisville just finished up on July 30th and 31st. There were approximately 135 members in attendance. If you didn’t make it, you missed a good one. If you’d like to see what you missed you can go the chapter website and find the presentations. It was a fabulous day and a half. Chris Woosley and his team did a fantastic job of organizing and coordinating. Since the meeting, I’ve received numerous telephone calls and E-mails with expressions of how informative and educational the timely topics met the need. Added were comments about the friendliness of the Kentucky people. I don’t want to wear it out, but great job Chris!

A few years back, previous chapter leadership made a conscious decision to seek and bring a higher caliber of speakers with quality content in their presentations to our Kentucky meetings. The intent to bring recognized national and international speakers in their field results in presenting you the quality education you deserve and information that you can apply on the job.

The next opportunity for an Institute will be the Fall meeting at Belterra Casino & Resort in Florence, IN. I encourage you to make every effort to attend. The Kentucky chapter has combined forces with the Indiana and Southwest Ohio chapters to provide a one of a kind conference. We will also be recognizing Founder’s Awards recipients, so if you are a recipient please attend. You can find information on the Kentucky website by using the URL www.hfmaky.org or the Institute website itself at www.hfmaconference.com. The Kentucky website also has a Facebook link that now has 53 members connected.

Many of you took the challenge, you stepped forward to volunteer. I thank you for the willingness to make a difference. The Kentucky chapter continues because of dedicated individuals who believe in the cause. I continue to encourage any of you to step forward and offer a volunteering hand. Any of our chapter leaders are more than happy to help you get involved.

As we continue with Cathy Jacobson’s National theme of “Making It Count” I hope and encourage you to find opportunities to offer your knowledge as we face the challenges of healthcare reform being debated by the President and Congress. Please contact your congressional leaders and express your thoughts. The outcome will be something we will have to live with for a long time. Expressing your position is kind of like voting, if you don’t vote you shouldn’t complain. There are parallels with healthcare reform.

In closing, great opportunities to help others seldom come, but small ones surround us daily.

If I can assist you please feel free to contact me.

Bill Jones, FHFMA

The articles in Financial Scene often contain summaries of complex legal or accounting issues and may not cover all the “fine points” related to specific situations. Accordingly, they are not intended to be legal or accounting advice, which should always be obtained in direct consultation with a legal or accounting professional.
the FLSA be paid overtime (1½ times their regular rate) for work performed in excess of 40 hours in a workweek. For employees with whom they have a prior agreement, nursing care facilities may use the alternative “8 and 80” system, which requires overtime for work performed in excess of 8 hours in a day and for work performed in excess of 80 hours in a 14-day period. Because of the complexity of the regulations governing the FLSA, mistakes are easily and frequently made. According to a Fact Sheet published by the United States Department of Labor, the most common violation in the nursing care industry is the failure to pay for all hours worked. This kind of violation can occur when an employer fails to pay for work performed before or after an employee’s shift or during an employee’s meal period. “Minimum wage and overtime pay violations also occur when employers make deductions or demand reimbursement for the cost of required uniforms or equipment.” Fact Sheet #31: Nursing Care Facilities Under the Fair Labor Standards Act.

Other common mistakes made by employers include failing to incorporate payments such as non-discretionary bonuses or shift differentials in the calculation of the regular rate used to pay overtime and failing to pay overtime to employees who are erroneously classified as non-exempt. Merely paying an employee a salary does not make that employee “exempt” under the FLSA. The exempt classification is based on the duties of the employee, not just the title or salary status.

Whether an employee must be paid while on call can also be an issue for hospital and health care employers. If an employee is required to remain on call on the employer’s premises or is required to remain so close to the premises that the employee cannot use time effectively for his or her own purpose, he or she generally should be paid. On the other hand, an employee who is required to carry a cell phone or pager or who must leave a message where he or she can be reached usually would not be considered to be working and would not have to be paid.

Employers are frequently sued for failing to pay for work performed off-the-clock; failing to provide rest and meal breaks as required by state law; and failing to pay for time spent donning and doffing protective clothing or equipment. Even if the employee takes it upon him or herself to work off the clock, employers who are aware of and permit such activity are frequently sued for failing to compensate employees for the time worked.

To avoid being caught in the upsurge of litigation, employers should audit their wage and hour compliance before their practices become the subject of a suit or an enforcement action under the FLSA. Employers should ask these questions:

- Are our employees properly classified as exempt? In making this determination, employers need to look at the employee’s actual duties, not just what is listed in the job description. An employee’s job may have changed so that a position that once would have properly been classified as exempt may no longer be. Also, several years ago the exemption regulations changed, making some jobs that were previously exempt into non-exempt positions. The FLSA contains many different exemptions, and many different factors are required to satisfy those exemptions.
- Are the independent contractors really independent contractors or are they employees? Labels do not matter. Look carefully at the amount of control that the employer has over the independent contractor in performing the work. If an employer controls the method, manner or means of performing the work, then the independent contractor may really be an employee. A misclassification in this area could lead to trouble with the IRS as well as with the Department of Labor.
- What kind of time-keeping practices do we use? Are employees required to clock in and out on a time clock or do they record their time on a time sheet? Have employees been told to report all time worked? Does the payroll system make automatic deductions, such as for meal breaks? If so, is there a process in place by which employees can report that they actually performed work?
- Do we have non-exempt employees who travel from job site to job site during the workday? If so, do we accurately compensate employees for travel time, excluding home-to-work and work-to-home travel time?
- What kind of rounding practices or clock-in windows are being used? What have employees been told about when they can clock in or begin work?
- Are exempt employees’ paychecks being docked? If an exempt employee’s paycheck is reduced because of the quantity or quality of work, his or her exempt status may be in jeopardy. This could lead to payment of overtime not only to that employee but all other employees that hold the same job.
- Are overtime payments being properly calculated? Are all non-discretionary payments and shift differentials being included in the calculation of the regular rate?
- Are employees being paid for all hours worked? What happens when an employee works unauthorized overtime? Do employees perform any pre-shift or post-shift duties for which they should be compensated?
- Are employees receiving rest and meal breaks in compliance with state law?
- Are employees being paid properly upon termination of their employment? Are improper deductions made from final paychecks?
- Are changes ever made to employees’ timecards or time sheets? If so, under what circumstances and are the employees informed about those changes?
- Do we maintain all records required by federal and state wage and hour laws?

Exercising pay practices on a regular basis is the best opportunity to avoid a lawsuit or an enforcement action under the FLSA. Employers should also listen to any employee complaints about their pay practices to see if they raise any concern about FLSA or state wage and hour law compliance. Taking these steps will reduce the risk of wage and hour actions.

Michelle Wyrick and Mitzi Wyrick are partners at Wyatt, Tarrant & Combs, LLP. They are both members of Wyatt’s Class Action and Appeals Service Team, and they also practice labor and employment law, including wage and hour litigation and compliance.
Waiting for improvement in the credit market has paid off for an Idaho hospital that has closed on affordable financing for a replacement facility. Gooding County Memorial Hospital is replacing its 40-year-old hospital using a $27.6 million mortgage insured by the Federal Housing Administration’s Section 242 program. The financing was underwritten by Lancaster Pollard, which worked continually with the hospital to explore viable financing options and achieve the best possible rate and terms in the tight market. The new 15-bed facility will be known as North Canyon Medical Center, and it is expected to open in 2010. Lancaster Pollard anticipates that the loan guarantee will save North Canyon about $9 million over the life of the loan compared with issuing the debt without credit enhancement.

The Section 242 Mortgage Insurance Program has seen an upsurge in attention from hospitals of all sizes as tight credit makes it more difficult to access capital for new construction and renovations. Moreover, changes to the program have opened it up to properties that want to refinance existing debt. Previously, refinances could be completed only if 20 percent of the funds were used for new projects; that requirement was eliminated in July of this year, and hospital advocates are working to further improve the terms available for this new refinance option.

So far in fiscal 2009, HUD already has committed to insuring more loan dollars than it did in all of 2007 or 2008, according to HUD data. Hospitals do not stop needing renovations and upgrades just because the credit market dries up, and they can’t always wait for strong capital markets. The 242 program provides access to affordable capital even when other doors close.

Alan Spidel is a vice president of Lancaster Pollard and a member of the Colorado chapter of HFMA. He can be reached at (303) 773-7151 or aspidel@lancasterpollard.com.

Additional resources on the FHA 242 program can be found

- at the HFMA Financial Pulse: http://www.hfma.org/pulse/capital/242_finance.htm

Understanding every nuance, not just every number.
Hospitals Reaching Out To Communities To Provide More Charity Care

By Bruce Nelson, Vice President, SearchAmerica, A part of Experian

It may come as a surprise to the general public, but a little known fact is that millions of patients are automatically identified and enrolled in hospital sponsored charity care programs nationwide. It is unlikely that your patients understand much about a hospital’s generosity, let alone the technologies that automate its community benefit programs. These charity care systems enable hospitals to execute their community benefit programs more effectively, providing medical services free of charge or at a significantly reduced rate to qualified patients — amounting to billions in savings annually to U.S. consumers. This practice is at the core of the mission of our nation’s not-for-profit healthcare networks.

Unfortunately, it can be difficult and time consuming to manually identify all qualified patients and efficiently enroll them in a hospital’s charity care program. Doing so without automation is wrought with errors and inconsistencies, so many hospitals have taken a new approach for improved accuracy and consistency.

These systems have greatly impacted the lives of millions of patients and their families over the years who otherwise may not have received charity care. The following are excerpts from actual thank you notes from hospitals and patients who have seen the benefits of these systems first-hand:

“Our automated charity care screening system approved two patients yesterday—one’s wife shed tears of gratitude. We were also able to approve another just now, a child whose father lost his regular job recently, and is now making $9 per hour. This is a wonderful service that we are providing. The staff feels good and the patients are truly grateful that the financial stress has been lifted and they can focus on their health.”

Automation = More Charity Benefits for your Patients

Since 2001, it is estimated that more than five million low income patients been enrolled in charity care programs through automated solutions from third party providers. These solutions rapidly identify patients who meet the criteria for a hospital’s charity care program, Medicaid or other financial assistance programs. Using data from third party service provider ensures that each patient’s need is assessed on their financial need, eliminating factors such as age, race, gender, etc. from the process.

More and more hospitals are having these systems routinely check all incoming patients to see whether or not they qualify for charity care programs. This ensures that all qualified patients are identified and eliminates any bias.

Automated qualification and enrollment processes connect patients with the programs that were designed to help them. This process saves the patients money, but just as importantly, it preserves their dignity by eliminating concentrated collection efforts.

Saving Time and Money for Patients and Hospitals

Hospitals need to reduce costs across their organizations, but wish to do so without negatively impacting their services or the patient’s satisfaction. Third party charity care solutions are one of very few methods that offer a win-win scenario for the hospital and the patient alike by:

• Reducing Enrollment Time: Automating this step reduces the enrollment process to just minutes, instead of the hour or more needed to manually process an application — saving a hospital’s financial counselors hours of time spent on paperwork. Likewise, patients find out immediately whether or not they qualify, eliminating added stress from their medical situation.

• Improving Compliance with Government Regulations: Hospitals need to demonstrate their commitment to serving their communities. Charity care solutions provide the results and reporting needed to comply with the IRS’ 990 Form Schedule H and other state and local requirements.

• Stopping Unproductive Collection Efforts: Hospitals can save on their collection processes by eliminating any collection activities on patient accounts that qualify for charity care. Its efforts can be better focused on those who have the ability to pay. In addition, patients enrolled in charity care programs eliminate the anxiety often caused by collection efforts on hospital bills that they are truly unable to pay.

Curing a Nation’s Misperception

Hospitals have been wrongly portrayed as organizations focused more on...
money than care. Those of us in the healthcare industry know that this is just not true. How can we prove that we are living up to our mission? The clearest answer is by demonstrating community benefit.

Unfortunately healthcare networks are often unable to publicly demonstrate their mission of serving their communities. Manual and inconsistent qualification and enrollment processes offer varied results that are often understate their level of generosity.

Using automated charity care solutions, healthcare networks can provide reliable statistics showing their community benefit through the number of patients they have aided, both medically and financially, and the cost of these services absorbed by the healthcare network within their charity care program. Positive public relations are critical to every hospital.

Today’s public is mostly unaware of the healthcare industry’s generosity to those in need through their unique charity care programs. To address this issue, smart hospitals are implementing strict processes and technologies to enroll all qualified patients and use this information to show their communities their commitment to their mission.

Automating charity care programs is good for the patient, the hospital, and our nation. Thank you notes from patients and hospital staff are just the tip of the iceberg of the appreciation and impact of these systems.

HFMA National’s On-line Membership Directory

Have you visited HFMA National’s On-line Membership Directory lately? Here’s the link: http://www.hfma.org/dual_login.cfm. When you select “HFMA Directory” not only can you search for members of our chapter, you can also search for all of your HFMA colleagues by name, company, and location — regardless of chapter! You may also view your current contact information and make edits to your profile, as well as view any products you have ordered, events you have registered for, your CPE credits, your Founders points, and more!

It is vital that HFMA has your correct information, so please take a moment to view your record now. By doing so, you will ensure that HFMA continues to provide you with valuable information and insights that further your success.

Some people say accountants are all about the numbers.

Here are some numbers that are important to us…

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An Accountant, An Economist, And Archimedes Walk Into A Bar

By Kent Rader

Our son, Keith graduated from Arkansas State University in December and this month our daughter, Maggie, is graduating from my Alma Mater, William Jewell College in Liberty, Missouri, so I am just about out of the kid business. Maggie is getting a theater degree and don’t you know everyone in our families blames me for that.

“Oh, I wonder where she gets the desire to be on a stage in front of an audience? Hummm?”

And it’s not like she wants to be on television or in movies. She wants to be a Shakespearean actress, which means her entire career she will be reciting lines like:

“The heavens forbid, But that our loves and comforts should increase, Even as our days do grow.”

or

“Is there more toil? Since thou dost give me pains, Let me remember thee what thou hast promised which is not yet performed me.” or

“Would thou liktest a hot apple pie with that?”

Okay, Shakespeare didn’t write that last line.

During college I majored in accounting and economics and we seemed to be the butt of campus jokes. During my Ethics class, the professor began the discussion about ethical dilemmas by asking, “If an accountant and economists are drowning and you only have time to save one of them, do you eat a sandwich or read the paper?”

My business law professor noted, “An economist is someone who doesn’t have the personality to be an accountant.”

My sophomore year I wasn’t able to get into the business statistics class because it conflicted with my schedule of watching The Gong Show every afternoon. (And I’m not talking that garbage Dave Attell put out a few months ago. I’m talking the original with Chuck Barris, the Unknown Comic, Gene, Gene, The Dancing Machine. Look it up on Youtube.)

Actually business statistics was during cross country practice and anyone who knew me during college will tell you I was more serious about running than academics.

To take care of the requirement, my advisor put me in a mathematical statistics with a bunch of math majors. I don’t mean to be ugly, but these people didn’t have the personalities to be economists. One of these guys was on the cross country team and in the three years I knew Paul, the only thing I remember him saying is once on a run, out of no where, he goes, “The ancient Babylonians understood, if not the mathematical significance, at least the principles of the Pythagorean Theorum.”

“Really, Paul? I just don’t understand why you’re not more popular with the ladies?”

The first day of statistics class, the professor, Sherm Sherrick, walks in sporting a long beard and sunglasses. I thought he was part of ZZ Top. For the next 16 weeks he proceeds to bore me out of my mind and I made no secret of my disdain for this class.

On the last day of finals that semester, I wake up to hear Bill Rodgers on the local radio station. Bill Rodgers is the greatest American distance runner to ever live and he’s at the height of his career, winning both the Boston and New York City Marathons four times. Next thing I know, I’ve called the radio station and am talking with Bill Rogers. He invites me to run with him that afternoon and I accept more quickly that an eleven-year old girl getting two Hannah Montana tickets, never once thinking that the time we’re meeting is the same time as my statistics final.

I’m sitting in my room using the skills I learned in that statistics class to calculate what my grade will be when I skip the final, when a friend of mine suggests, “Why don’t you just ask professor Sherrick if you can take your final early?”

Figuring I have nothing to lose, I go to Professor Sherrick’s office, explaining my conundrum to him, punctuating my argument by saying, “This would be like you getting to meet Archimedes.”

Professor Sherrick laughs, hands me a pencil and the test, saying “Enjoy yourself this afternoon.”

Sylvia Boorstein says in her book It’s Easier Than You Think, “Every single act we do has the potential of causing pain, and every single thing we do has consequences that echo way beyond what we can imagine. It doesn’t mean we shouldn’t act. It means we should act carefully. Everything matters.”

For the past thirty years I have cherished the memory of Professor Sherrick’s kindness on that cold, December morning, but regret never telling him how much it meant to me. Professor Sherrick passed away in 2007, but last December William Jewell asked me to speak at the Lighting of the Quad ceremony, sharing my favorite Christmas memory at William Jewell. I was thrilled to tell about Professor Sherrick and hoped, regardless if those in the audience were teachers, accountants, economists, or comedians, they would see opportunities to show kindness to those we come in contact with daily.

Keith and Maggie, your mom and I couldn’t be more proud of you. I hope you have a great spring and always remember laughter matters.

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Known as the world’s cleanest comedian and speaker, Kent Rader helps people learn and experience how laughter matters in reducing stress. A reformed accountant, Kent has written the stress reduction book titled Let It Go, Just Let It Go available at Amazon.com and featured in the Country Inns and Suites Read It And Return Program in 200 hotels. Kent is also the winner of the 2007 Branson Comedy Festival. One conference participant may have said it best, “I laughed so hard my face hurt! Aren’t we lucky Kent chose to leave accounting to develop this wonderful gift?” For information or a free DVD, please contact Kent at 405-209-3273 or email kent@kentraderspeaks.com.
Healthcare 101

Back by popular demand, the recent Healthcare 101 session with Dr. Michael Nowicki on July 20th was a great success for the chapter. Collaborative efforts with the American College of Healthcare Executives (ACHE) generated nearly 80 attendees.

Dr. Nowicki, FACHE, FHFM —Professor & Director of Texas State University School of Health Administration, brought his world of healthcare knowledge to a classroom style presentation outlining the basics of healthcare. His delivery gave attendees the insight and tools needed to capture the unique aspects of healthcare finance. Topics included Medicare and other payer issues, healthcare financial management processes, top concerns facing healthcare finance professionals and more.

Attendees expressed a better understanding of the healthcare industry from the perspective of providers and payers while networking with fellow healthcare professionals facing similar challenges in the workplace.

On behalf of the Kentucky Chapter, we extend our sincere thanks to Dr. Nowicki and to the ACHE chapter for their partnership.

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