

## US Fair Labor Standards Act: Hourly Nurse Practitioners And Hourly Physicians Assistants Do Qualify For Overtime Pay.

The US Circuit Court of Appeals for the Fifth Circuit has ruled that nurse practitioners and physicians assistants who are paid on an hourly basis are entitled to time and one-half for overtime worked in excess of forty hours per week.

The US Fair Labor Standards Act (FLSA) says that an employee who works in a *bona fide* professional or administrative capacity, and is paid on a salaried basis, is not entitled to overtime for hours worked in excess of forty per week.

Under the court's interpretation of the US Department of Labor regulations that go with the FLSA, nurses, nurse practitioners and physicians assistants are *bona fide* professionals. Thus if persons in these professions are paid on a salaried basis they are not entitled to overtime pay. Only if they are paid on an hourly basis do they qualify for time and one-half for overtime, even as professionals.

### Not Practicing Medicine

The FLSA says that physicians, lawyers and teachers are *bona fide* professionals, but they are not entitled to time and one-half for overtime even if they are paid on an hourly basis.

The argument raised by the nurse practitioners' and physicians assistants' employer, a corporation which staffs hospital emergency rooms in more than twenty states nationwide, was that nurse practitioners and physicians assistants are engaged in the practice of medicine and should be treated the same as physicians under the FLSA's no-overtime rule for physicians.

The court ruled that nurse practitioners and physicians assistants do not practice medicine. Reading between the lines it appears the court basically worked backward to this conclusion to allow these caregivers to fall outside the FLSA's rule for physicians so they can receive the overtime compensation the court believed they equitably deserve. **Belt v. EmCare, Inc.**, \_\_\_ F. 3d \_\_\_, 2006 WL 758277 (5th Cir., March 24, 2006).