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Hospital found to be joint employer of temp

Barfield v. NYC Health and Hospitals Corp., Bellevue Hospital Center, 2nd Cir., No. 06-4137, 06-4310

A certified nursing assistant, employed and referred by three separate temporary employment agencies to the same hospital, was considered an employee of the hospital for purposes of the Fair Labor Standards Act. The hospital thus was liable for overtime hours worked by the temp.

Anetha Barfield, a certified nursing assistant, gained concurrent employment at Bellevue Hospital in New York through three separate referral agencies. The first agency to place Barfield at Bellevue specifically noted in its policies that temporary employees were not allowed to work more than 40 hours per week. The explanation for the policy provided to Barfield was that Bellevue would not pay overtime. Nevertheless, Barfield secured placements at Bellevue from two additional agencies. As a result, she worked more than 40 hours per week for 16 weeks during her tenure with Bellevue, although never for a single referral agency. Neither the referral agencies nor Bellevue paid Barfield overtime compensation for the weeks she worked more than 40 hours.

Bellevue works with many different referral agencies to meet its staffing needs. The agencies are expected to train temporary employees assigned to Bellevue and to carry malpractice insurance on those employees. Typically, Bellevue pays a referral agency a flat hourly fee for the services of employees referred by the agency. From that fee, the agency pays its temporary employees an hourly rate that it establishes. Consequently, the court found that the hospital was a joint employer and liable for overtime payments.

An employer should be aware of its potential status as a joint employer of temporary agency workers and proceed with due care in its treatments of temporary agency workers. Employers need to create a procedure or mechanism for ensuring that temps are not using referral agencies to circumvent employment restriction, including limits on overtime work.

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