

The Recent Auditor General Report and Central Pennsylvania Hospitals

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In April, 2015, the Pennsylvania Auditor General released a [Report](#) that chastised the Department of Labor and Industry for its failure to implement adequate procedures to ensure that all complaints under the Prohibition of Excessive Overtime in Healthcare Act (Act 102) were investigated and resolved in a timely manner. Act 102 prohibits hospitals and other healthcare facilities from mandating employees to work in excess of a regularly scheduled shift. Although the audit focused on Labor and Industry's practices and procedures, it could have a major impact on the regulatory environment for Hospitals and Healthcare providers in Central Pennsylvania.

In particular, Central Pennsylvania Hospitals should be on alert regarding five areas in which the Auditor General suggested Labor and Industry had failed.

1. Hospitals and Healthcare Providers are likely to experience greater pressure for collecting documentation in a speedy manner. The Auditor General cited the lack of timeliness in the complaint response and resolution process. As with anytime an administrative agency must react to claims that it fails to accomplish its statutory responsibilities, a greater emphasis is likely to be put on pushing hospitals and healthcare providers to respond to investigators' inquiries.
2. Expect and respond properly to a documented investigative process. It was noted that Labor and Industry was inconsistent regarding the manner in which it communicated with employees and employers. Employer hospital and healthcare providers should recognize that the investigative process is likely to be better documented going forward – therefore, be proactive in keeping your own investigative file and noting dates and times of phone calls with investigators and employees as well as confirming telephone conversations or in person meetings with a follow up e-mail of what was said and what the expectations are moving forward.
3. Make sure steps are taken to ensure there cannot be a claim for retaliation following an Act 102 Complaint. Act 102 prohibits retaliation for filing a complaint or refusing mandatory overtime in violation of the Act. Employers are often unaware of which employees have filed a complaint due to the fact that investigators are reluctant to disclose an employee's identity. The Auditor General report chided Labor and Industry for a lack of documentation in this regard. If an employer was not aware of an employee filing a complaint, this information should be provided in the investigation involving a claim of retaliation.
4. Cooperate to the extent legally required with an investigation. The Auditor General report notes that investigative reports were incomplete, and hints that this is the fault of employer hospitals and health care providers. Under the recently implemented Act 102 regulations, administrative penalties are in part based upon an employer's lack of cooperation.
5. Make sure to document the end of the investigation. Apparently Labor and Industry was not issuing closing letters. Failing to obtain documentation that an investigation has been completed places a hospital or healthcare provider in a difficult position in responding to subsequent inquiries or attempting to defend against future investigations. Again, under the new regulations, prior violations are considered for imposition of penalties.

In sum, these five areas where the Department of Labor and Industry was cited, will likely result in a reaction that will impact the enforcement of Act 102 moving forward. Central Pennsylvania Hospitals and Healthcare Providers should be aware of this, and prepare accordingly.

For more information, please contact Kevin Hall at khall@tuckerlaw.com or 717.234.7951