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Hospital employees sue over unpaid lunch time

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SYRACUSE — Nearly 300 hourly employees of Crouse Hospital and St. Joseph's Hospital Health Center in Syracuse, and Faxton-St. Luke's Healthcare in Utica and New Hartford filed three class-action lawsuits Nov. 13 claiming the hospitals didn't properly compensate them when they had to work through lunch breaks.

That's according to attorney Patrick Solomon, a partner in the Rochester law firm of Dolin, Thomas, and Solomon, LLP.

The lawsuits, filed in the federal court for the Northern District of New York, claim that hospital employees may not have been paid if their lunch breaks were either interrupted or missed altogether because of caring for a patient.

The federal Fair Labor Standards Act (FLSA) indicates health-care workers are entitled to a 30-minute meal or applicable compensation if the meal break isn't possible.

Health-care employees usually don't get to take a full 30-minute meal break, said Solomon.

"The employer will use a time-keeping system that automatically deducts a half-hour for lunch, regardless of whether the employee actually was able to take that 30-minute meal break," Solomon said during a news conference.

Plaintiffs had told the law firm the hospitals use a time-keeping system developed by Chelmsford, Mass.-based Kronos Inc.

All three hospitals confirmed their use of the Kronos system. The devices include a mechanism for automatically deducting 30-minutes from an employees' workday for a meal. Employers have the option of turning the automatic deduction feature on and off.

In continuing legal-education classes his firm offers for employers, Solomon said the defense attorneys he works with recommend employers turn the automatic-deduction feature off.

"It is a recipe for disaster for you," he said.

The time-records will be examined as part of the discovery process, said Solomon.

Crouse employs more than 2,500 people in total, St. Joseph's has more than 3,000 employees, and Faxton-St. Luke's employs more than 2,600.

The plaintiffs include 86 employees from Crouse, 106 employees from St. Joseph's, and 89 from Faxton-St. Luke's, according to Solomon.

The Central New York Business Journal checked with Solomon to see if the plaintiff number had grown since the news conference on Nov. 13, but didn't receive a response before press time on Nov. 19.

Others can join the lawsuits, but due to the federal three-year statute of limitations, they have to decide quickly because many of the employees are running out of time, said Solomon.

Federal law allows workers to recover lost wages for up to three years, but the time period is six years under state law, if the court agrees to allow the state claim.

"We're hoping to recover these employees' lost wages," Solomon said, noting the firm believes the employees are owed substantial amounts of time.

The damages could reach into the millions of dollars for each of the three hospitals, said Solomon.

He wouldn't say when the investigation began but did say it has continued for months.

At least one of the Syracuse hospitals has doubts about the merit of the lawsuit.

During a voluntary audit in 2005 and 2006, the New York State Department of Labor interviewed more than 50 nurses at Crouse Hospital, said Robert Allen,

hospital spokesman, in a Nov. 13 e-mail message.

Auditors also reviewed dozens of randomly selected pay records and were satisfied with the Crouse's payroll systems and procedures, said Allen.

Allen said, Crouse isn't "quite sure about the merit of this particular lawsuit."

St. Joseph's was expecting its lawsuit notice to arrive on Nov. 19, according to hospital spokesperson Kerri Ganci, noting that the hospital wouldn't have a reaction until its human resources and legal departments had a chance to review the complaint.

In a Nov. 13 statement, Faxton-St. Luke's indicated it had not been notified about the lawsuit. In a follow-up inquiry on Nov. 19, hospital spokesperson Debra Altdoerffer indicated the hospital still had not received official notice about the lawsuit as of early that afternoon.

"We typically don't reach out to the employer and give them a lot of detail about what we're investigating," said Solomon.



■ **Compensation controversy:** Hospital workers file suit over not being paid when working through lunch.