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Social worker sues county for OT

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A San Mateo County social worker is suing the county for failing to pay her overtime, according to a court complaint. Nancy Nieves, a social worker in the Human Services Agency, filed the lawsuit last week in the U.S. District Court against San Mateo County. She claims that she would work up to 16 hour shifts, up to four days per week, yet was only paid for 40 hours of work.

In 2013, Nieves made a total salary of \$95,155 as a "social worker III." Of that, she earned \$437.33 in overtime. Nieves currently works for the county and has been there for 13 years as a weekend after-hours social worker, said her attorney Jason Erlich. Her shift used to start at 5 p.m. on Friday and end at 8 a.m. on Monday. She was required to be available 24 hours a day throughout the weekend, including answering the county's hotline calls for child welfare issues, said Erlich.

Supervisor approval

Nieves would work about 24 additional hours of work per week, Erlich told the Post yesterday. She was told early on to only write in 10 hours per shift on her weekly time sheets, he said. It was the county's policy that in order to receive overtime, she had to get supervisor approval, he said.

"Ms. Nieves was often exhausted after working for 64 hours straight with only a few hours of intermittent sleep," he said. He said only recently in October did the county split her shift to keep weekend social workers from working "excessive hours."

Paul Okada, Chief Deputy County Counsel, told the Post yesterday that Nieves is not entitled to overtime under the Fair Labor Standards Act (FLSA). The county views her as a “professional” meaning she gets paid a set salary, guaranteed for her work week. It means that she can work a little more than the 40 hours a week, but is not entitled to overtime unless a supervisor approves it.

But, Erlich argues that under that same act, Nieves and other social workers performing similar job duties are entitled to overtime after 40 hours of work. For years the county considered Nieves an “exempt” employee and did not pay her overtime, Erlich said.

Union contract

Okada said that she is a member of a union, which negotiated a contract with the county. In that contract, it outlines that overtime is allowed, if approved by a supervisor. “Our view is that she was paid for everything she’s entitled to by contract and statute,” Okada said. As of yesterday, the county has not been officially served with the lawsuit, Okada said. Copyright, 2014, Daily Post, L.L.C., All Rights Reserved.