

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN

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CAROLYN J. O'LEARY,  
individually and on behalf of  
all others similarly situated,

Plaintiffs,

v.

Case No. 17-C-1774

HUMANA INSURANCE COMPANY, et al.,

Defendants.

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**ORDER ON PLAINTIFFS' RENEWED AND SECOND  
MOTIONS TO COMPEL DISCOVERY**

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After considering Plaintiffs' renewed motion to compel (Dkt. No. 110) and second motion to compel (Dkt. No. 104), conducting a hearing on the motions, and reviewing *in camera* certain reclassification documents produced in response to Plaintiffs' Request for Production No. 5, the court **GRANTS** Plaintiffs' motions as follows:

1. ***Schroeder Documents***. Request for Production No. 3: Within thirty (30) days, Defendants shall produce to Plaintiffs without redactions—other than redactions of (1) the identities of *Schroeder* class members, and (2) limited personal information, such as social security numbers, birth dates, payroll information, and bank account information—all documents produced by Defendants in *Schroeder* (excluding documents specific to individual *Schroeder* class members) and transcripts of depositions, including the exhibits thereto, taken in *Schroeder*, Case No. 12-C-137

(E.D. Wis.) (excluding depositions taken of *Schroeder* plaintiffs). No duplicative production of completely unredacted documents or transcripts need be made.

2. **Reclassification Documents.** Request for Production No. 5: Within thirty (30) days, Defendants shall produce to Plaintiffs without redactions the documents Defendants previously redacted and produced in response to this discovery request.

3. **Extra Compensation for Hours Worked.** Within thirty (30) days, Defendants shall, pursuant to:

A. Request for Production No. 37: produce to Plaintiffs, for each Collective Member and to the extent not already produced, any and all payroll records showing extra compensation for hours worked paid to any Collective Member for each pay period between February 8, 2012, and March 3, 2018.

B. Interrogatory No. 5: describe and explain the circumstances under which Humana paid to any Collective Member extra compensation for hours worked between February 8, 2012, and March 3, 2018, and identify the reason for each payment. The description, explanation of the circumstances, and identification of the reason for each payment should include whether the payment was for mandatory or voluntary work, whether the payment was for on-call work, and the number of hours required. Defendants need not answer this interrogatory with respect to non-Collective Members because the issue of what hours a fixed wage was intended to cover is a Plaintiff-specific, rather than a role-specific inquiry. *See Urnikis-Negro v. Am. Family Prop. Servs.*, 616 F.3d 665, 680–81 (7th Cir. 2010); *see also Glorioso v. Williams*, 130 F.R.D. 664, 664–65 (E.D. Wis. 1990). In other words, instances of extra compensation as to non-Collective Members is irrelevant to whether the Collective Members' fixed wages were intended to cover all hours worked because data exists for Collective Members. The Collective Member data is what is relevant.

C. Request for Production No. 17(c): produce to Plaintiffs all documents from February 8, 2012, to March 3, 2018, that refer or relate to Humana's practices or policies regarding whether Collective Members are eligible for extra compensation for hours worked. Documents responsive to this request include, but are not limited to, documents that describe what the extra compensation is for, as well as directions to individual employees or supervisors concerning any extra compensation. Emails to or from supervisors directing or concerning extra compensation are also included. The parties are instructed to communicate as to search terms.

4. **“Overtime” or “40 Hours” Documents.** Request for Production No. 36: Within thirty (30) days, Defendants shall produce to Plaintiffs any and all documents from February 8, 2012, to March 3, 2018, including but not limited to, policy statements, internal memoranda, correspondence, and emails, that use the term “overtime,” “forty hours,” or “40 hours” and relate or refer to any Collective Member.

5. Defendants may present evidence to the court regarding the burdensomeness of responding to Requests for Production Nos. 17(c), 36, and 37 within thirty (30) days.

6. **Willfulness Documents.** Within thirty (30) days, Defendants shall produce documents responsive to Requests for Production Nos. 27, 29, 30, and 31 dating back to February 8, 2012.

7. **Humana Seeking Government Opinions.** Interrogatory No. 12: Within thirty (30) days, Defendants shall identify and describe any instances between February 8, 2012, and March 3, 2018, when Humana, or an agent of Humana working on behalf of Humana, sought an opinion from the U.S. Department of Labor, or any other governmental body, relating to the Fair Labor Standards Act exemption classification of UM nurses.

8. **Avaya Data.** Request for Production No. 38: the court will stay consideration of Plaintiffs' request to compel Humana to produce time-stamped Avaya data.

**IT IS FURTHER ORDERED** that the parties' motions for leave to file sur-replies (Dkt. Nos. 128, 138) and to file documents under seal (Dkt Nos. 106, 112, 116, 126, 135, 137, 148, 153) are **GRANTED**.

Dated this 10th day of September, 2019.

s/ William C. Griesbach  
William C. Griesbach, Chief Judge  
United States District Court - WIED