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2011-2012 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 5, 2011

Introduced by M. of A. GUNTHER, CLARK, MAYERSOHN, LANCMAN, COLTON,
JAFEE -- Multi-Sponsored by -- M. of A. McDONOUGH, PHEFFER -- read
once and referred to the Committee on Labor

AN ACT to amend the labor law and the education law, in relation to the
hours worked by nurses

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEM-
BLY, DO ENACT AS FOLLOWS:

1 Section 1. Section 167 of the labor law, as added by chapter 493 of
2 the laws of 2008, is amended to read as follows:
3 S 167. Restrictions on consecutive hours of work for nurses. 1. When
4 used in this section:
5 a. "Health care employer" shall mean any individual, partnership,
6 association, corporation, limited liability company or any person or
7 group of persons acting directly or indirectly on behalf of or in the
8 interest of the employer, which provides health care services (i) in a
9 facility licensed or operated pursuant to article twenty-eight AND ARTI-
10 CLE THIRTY-SIX of the public health law, including any facility operated
11 by the state, a political subdivision or a public corporation as defined
12 by section sixty-six of the general construction law, or (ii) in a
13 facility operated by the state, a political subdivision or a public
14 corporation as defined by section sixty-six of the general construction
15 law, operated or licensed pursuant to the mental hygiene law, the educa-
16 tion law or the correction law.
17 b. "Nurse" shall mean a registered professional nurse or a licensed
18 practical nurse as defined by article one hundred thirty-nine of the
19 education law who provides direct patient care.
20 c. "Regularly scheduled work hours", including REGULARLY SCHEDULED
21 HOME CARE VISITS, pre-scheduled on-call time and the time spent for the
22 purpose of communicating shift reports regarding patient status neces-
23 sary to ensure patient safety, shall mean those hours AND HOME CARE

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets
[] is old law to be omitted.

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1 VISITS a nurse has agreed to work and is normally scheduled to work
2 pursuant to the budgeted hours AND HOME CARE VISITS allocated to the
3 nurse's position by the health care employer; and if no such allocation
4 system exists, some other measure generally used by the health care
5 employer to determine when an employee is minimally supposed to work,
6 consistent with the collective bargaining agreement, if any. Nothing in
7 this section shall be construed to permit an employer to use on-call
8 time as a substitute for mandatory overtime.

9 2. a. Notwithstanding any other provision of law no health care
10 employer shall require a nurse to work more than that nurse's regularly
11 scheduled work hours OR HOME CARE VISITS, except pursuant to subdivision
12 three of this section.

13 b. Nothing in this section shall prohibit a nurse from voluntarily
14 working overtime.

15 3. The limitations provided for in this section shall not apply in the
16 case of:

17 a. a health care disaster, such as a natural or other type of disaster
18 that increases the need for health care personnel, unexpectedly affect-
19 ing the county in which the nurse is employed or in a contiguous county;
20 or

21 b. a federal, state or county declaration of emergency in effect in
22 the county in which the nurse is employed or in a contiguous county; or

23 c. where a health care employer determines there is an emergency,
24 necessary to provide safe patient care, in which case the health care
25 provider shall, before requiring an on-duty employee to remain, make a
26 good faith effort to have overtime covered on a voluntary basis, includ-
27 ing, but not limited to, calling per diems, agency nurses, assigning
28 floats, or requesting an additional day of work from off-duty employees,
29 to the extent such staffing options exist. For the purposes of this
30 paragraph, "emergency", including an unanticipated staffing emergency,
31 is defined as an unforeseen event that could not be prudently planned
32 for by an employer and does not regularly occur; or

33 d. an ongoing medical or surgical procedure in which the nurse is
34 actively engaged and whose continued presence through the completion of
35 the procedure is needed to ensure the health and safety of the patient.

36 3-A. IN THE CASE OF A NURSE EMPLOYED BY AN EMPLOYER LICENSED PURSUANT
37 TO ARTICLE THIRTY-SIX OF THE PUBLIC HEALTH LAW, THE TERM 'EMERGENCY'
38 SHALL ALSO INCLUDE A SITUATION IN WHICH UNFORESEEN EVENTS MAKE IT NECES-
39 SARY FOR AN EMPLOYER TO REQUIRE A NURSE TO COMPLETE REGULARLY SCHEDULED
40 HOME CARE VISITS IN CIRCUMSTANCES WHERE THE LOCATION OF THE PRE-SCHE-
41 DULED VISITS AND LACK OF OTHER STAFFING OPTIONS FOR COVERAGE MAKE IT
42 IMPRACTICAL TO RESCHEDULE THE VISIT OR TO PROVIDE ALTERNATIVE COVERAGE.

43 4. The provisions of this section are intended as a remedial measure
44 to protect the public health and the quality of patient care, and shall
45 not be construed to diminish or waive any rights of any nurse pursuant
46 to any other law, regulation, or collective bargaining agreement.

47 S 2. Section 6510-e of the education law, as added by chapter 493 of
48 the laws of 2008, is amended to read as follows:

49 S 6510-e. Nurses' refusal of overtime work. The refusal of a licensed
50 practical nurse or a registered professional nurse to work beyond said
51 nurse's regularly scheduled HOME CARE VISITS OR hours of work shall not
52 solely constitute patient abandonment or neglect except under the
53 circumstances provided for under subdivision three of section one
54 hundred sixty-seven of the labor law.

55 S 3. This act shall take effect on the ninetieth day after it shall
56 have become a law.