STATE OF NEW YORK

10441

IN ASSEMBLY

April 23, 2018

Introduced by M. of A. GUNTHER -- read once and referred to the Committee on Labor

AN ACT to amend the labor law, in relation to the restrictions on consecutive hours of work for nurses

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section 167 of the labor law, as added by chapter 493 of the laws of 2008, is amended to read as follows:

§ 167. Restrictions on consecutive hours of work for nurses. 1. When used in this section:

a. "Health care employer" shall mean any individual, partnership, association, corporation, limited liability company or any person or group of persons acting directly or indirectly on behalf of or in the interest of the employer, which provides health care services (i) in a facility licensed or operated pursuant to article twenty-eight of the public health law, including any facility operated by the state, a political subdivision or a public corporation as defined by section sixty-six of the general construction law, or (ii) in a facility operated by the state, a political subdivision or a public corporation as defined by section sixty-six of the general construction law, operated or licensed pursuant to the mental hygiene law, the education law**, the social services law** or the correction law.

b. "Nurse" shall mean a registered professional nurse or a licensed practical nurse as defined by article one hundred thirty-nine of the education law who provides direct patient care.

c. "Regularly scheduled work hours", including pre-scheduled on-call time and the time spent for the purpose of communicating shift reports regarding patient status necessary to ensure patient safety, shall mean those hours a nurse has agreed to work and is normally scheduled to work pursuant to the budgeted hours allocated to the nurse's position by the health care employer; and if no such allocation system exists, some other measure generally used by the health care employer to determine when an employee is minimally supposed to work, consistent with the collective bargaining agreement, if any. Nothing in this section shall

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

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be construed to permit an employer to use on-call time as a substitute for mandatory overtime.

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

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

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

a. a health care disaster, such as a natural or other type of disaster that increases the need for health care personnel, unexpectedly affecting the county in which the nurse is employed or in a contiguous county; or

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

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

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

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

5. If, after investigation, the commissioner determines that an employer has violated this section, the commissioner shall issue to the employer an order directing compliance therewith, which shall describe particularly the alleged violation. A copy of such order shall be provided to any employee who has filed a complaint and to his or her authorized representative. The commissioner shall assess the employer a civil penalty of not less than one thousand nor more than ten thousand dollars, per violation. The employee shall receive an additional fifteen percent of the overtime payment from the employer for each violation as damages.

§ 2. This act shall take effect on the sixtieth day after it shall have become a law.