

# STATE OF NEW YORK

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840

2017-2018 Regular Sessions

## IN ASSEMBLY

January 9, 2017

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Introduced by M. of A. GUNTHER, ABINANTI, JAFFEE, STECK, COLTON, ROSEN-  
THAL -- Multi-Sponsored by -- M. of A. HOOPER -- read once and  
referred to the Committee on Labor

AN ACT to amend the labor law, in relation to restrictions on consec-  
utive hours of work for non-nursing direct-care staff

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 § 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 of the  
10 public health law, including any facility operated by the state, a poli-  
11 tical subdivision or a public corporation as defined by section sixty-  
12 six of the general construction law, or (ii) in a facility operated by  
13 the state, a political subdivision or a public corporation as defined by  
14 section sixty-six of the general construction law, operated or licensed  
15 pursuant to the mental hygiene law, the education law or the correction  
16 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. "Non-nursing direct-care staff" shall mean any employee who is not  
21 a nurse or other person licensed, certified or registered under title  
22 eight of the education law whose principal responsibility is to carry  
23 out direct patient care for one or more patients or provide direct  
24 assistance in the delivery of patient care.

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

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1 d. "Regularly scheduled work hours", including pre-scheduled on-call  
2 time and the time spent for the purpose of communicating shift reports  
3 regarding patient status necessary to ensure patient safety, shall mean  
4 those hours a nurse or non-nursing direct-care staff has agreed to work  
5 and is normally scheduled to work pursuant to the budgeted hours allo-  
6 cated to the nurse's position by the health care employer; and if no  
7 such allocation system exists, some other measure generally used by the  
8 health care employer to determine when an employee is minimally supposed  
9 to work, consistent with the collective bargaining agreement, if any.  
10 Nothing in this section shall be construed to permit an employer to use  
11 on-call time as a substitute for mandatory overtime.

12 2. a. Notwithstanding any other provision of law no health care  
13 employer shall require a nurse or non-nursing direct-care staff to work  
14 more than that nurse's or non-nursing direct-care staff's regularly  
15 scheduled work hours, except pursuant to subdivision three of this  
16 section.

17 b. Nothing in this section shall prohibit a nurse or non-nursing  
18 direct-care staff from voluntarily working overtime.

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

21 a. a health care disaster, such as a natural or other type of disaster  
22 that increases the need for health care personnel, unexpectedly affect-  
23 ing the county in which the nurse or non-nursing direct care staff is  
24 employed or in a contiguous county; or

25 b. a federal, state or county declaration of emergency in effect in  
26 the county in which the nurse or non-nursing direct care staff is  
27 employed or in a contiguous county; or

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

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

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

46 § 2. This act shall take effect immediately.