

# STATE OF NEW YORK

3706

2019-2020 Regular Sessions

## IN ASSEMBLY

January 30, 2019

Introduced by M. of A. GUNTHER, LIFTON -- 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:

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, the social  
16 services 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 pre-scheduled on-call  
21 time and the time spent for the purpose of communicating shift reports  
22 regarding patient status necessary to ensure patient safety, shall mean  
23 those hours a nurse has agreed to work and is normally scheduled to work  
24 pursuant to the budgeted hours allocated to the nurse's position by the  
25 health care employer; and if no such allocation system exists, some

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

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1 other measure generally used by the health care employer to determine  
2 when an employee is minimally supposed to work, consistent with the  
3 collective bargaining agreement, if any. Nothing in this section shall  
4 be construed to permit an employer to use on-call time as a substitute  
5 for mandatory overtime.

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

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

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

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

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

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

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

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

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

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