

STATE OF NEW YORK

136

2021-2022 Regular Sessions

IN ASSEMBLY

(Prefiled)

January 6, 2021

Introduced by M. of A. GUNTHER, ABINANTI, STECK, COLTON, L. ROSENTHAL --
read once and referred to the Committee on Labor

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

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 political
11 subdivision or a public corporation as defined by section sixty-six
12 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~~] direct-
24 care staff is 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~~] direct-care
27 staff is 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.