STATE OF NEW YORK

8940

IN ASSEMBLY

January 30, 2024

Introduced by M. of A. BRONSON -- 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 nurses

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

Section 1. Subdivisions 3, 4 and 5 of section 167 of the labor law, subdivisions 3 and 4 as amended by chapter 815 of the laws of 2022 and paragraph c of subdivision 3 and subdivision 5 as amended by chapter 27 of the laws of 2023, are amended to read as follows:

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**. The limitations on mandatory overtime shall be reinstated at the end of the health care disaster and shall not exceed three consecutive days**; 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**. The limitations on mandatory overtime shall be reinstated at the end of the declared emergency or after thirty consecutive days, whichever is shorter, provided that, pursuant to section twenty-nine-a of the executive law, nothing in this subdivision shall limit the power of the governor to suspend the provisions of this subdivision while a federal, state, or county declaration of emergency is in effect**; or

c. where a health care employer determines there is an emergency, necessary to provide safe patient care. 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**, and does not include routine nurse staffing needs that arose due to typical staffing patterns, typical levels of absenteeism, and time off typically approved by the employer for vacations, holidays, sick leave, and personal leave**; or

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

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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 department shall assess an employer a civil penalty of not more than one thousand dollars for a first violation, no more than two thousand five hundred dollars for a second violation within three years, and no more than five thousand dollars for a third or subsequent violation within three years where an employer requires a nurse to work more than such nurse's regularly scheduled work hours; provided, further, that the employee shall receive an additional fifteen percent of the overtime payment from the employer for each violation.**

5. 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.~~] **6.** Oversight of the use of mandatory overtime during an emergency. a. The commissioner, in consultation with the commissioner of health, shall have the authority to promulgate any regulations necessary to carry out the provisions of this section.

b. Any health care employer that utilizes an exception to the limitation on mandatory overtime provisions as provided for in subdivision three of this section shall notify the department when such provisions are in use. If a health care employer has utilized the mandatory overtime provisions as provided for in this section for fifteen days or more in a given month, the employer shall report to the department and the department of health: (i) the number of days mandatory overtime was required; (ii) the number of employees that were required to remain on duty in overtime status; and (iii) the dates and times mandatory overtime was required. If a health care employer has utilized mandatory overtime provisions under this section for forty-five days or more in any consecutive three month period the health care employer shall file with the department and the department of health an explanation for why mandatory overtime was required and provide an estimate of when the employer intends to cease the use of mandatory overtime.

c. The department shall establish an enforcement officer to oversee investigations into any complaints of violations of this section.

d. The health care employer shall, before utilizing mandatory overtime provisions and 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. Failure to engage in a good faith effort pursuant to this section shall be a violation. Any employee who has been required to work in violation of this section may file a complaint with the enforcement officer alleging such violation. Any complaint made pursuant to this paragraph must be made in good faith.

§ 2. This act shall take effect immediately.