

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:

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

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

7 a. a health care disaster, such as a natural or other type of disaster
8 that increases the need for health care personnel, unexpectedly affect-
9 ing the county in which the nurse is employed or in a contiguous county.

10 The limitations on mandatory overtime shall be reinstated at the end of
11 the health care disaster and shall not exceed three consecutive days; or

12 b. a federal, state or county declaration of emergency in effect in
13 the county in which the nurse is employed or in a contiguous county. The
14 limitations on mandatory overtime shall be reinstated at the end of the
15 declared emergency or after thirty consecutive days, whichever is short-
16 er, provided that, pursuant to section twenty-nine-a of the executive
17 law, nothing in this subdivision shall limit the power of the governor
18 to suspend the provisions of this subdivision while a federal, state, or
19 county declaration of emergency is in effect; or

20 c. where a health care employer determines there is an emergency,
21 necessary to provide safe patient care. For the purposes of this para-
22 graph, "emergency", including an unanticipated staffing emergency, is
23 defined as an unforeseen event that could not be prudently planned for
24 by an employer [~~and~~], and does not include
25 routine nurse staffing needs that arose due to typical staffing
26 patterns, typical levels of absenteeism, and time off typically approved
27 by the employer for vacations, holidays, sick leave, and personal leave;
28 or

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

LBD06876-02-4

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

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

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

16 [~~5.~~] 6. Oversight of the use of mandatory overtime during an emergen-
17 cy. a. The commissioner, in consultation with the commissioner of
18 health, shall have the authority to promulgate any regulations necessary
19 to carry out the provisions of this section.

20 b. Any health care employer that utilizes an exception to the limita-
21 tion on mandatory overtime provisions as provided for in subdivision
22 three of this section shall notify the department when such provisions
23 are in use. If a health care employer has utilized the mandatory over-
24 time provisions as provided for in this section for fifteen days or more
25 in a given month, the employer shall report to the department and the
26 department of health: (i) the number of days mandatory overtime was
27 required; (ii) the number of employees that were required to remain on
28 duty in overtime status; and (iii) the dates and times mandatory over-
29 time was required. If a health care employer has utilized mandatory
30 overtime provisions under this section for forty-five days or more in
31 any consecutive three month period the health care employer shall file
32 with the department and the department of health an explanation for why
33 mandatory overtime was required and provide an estimate of when the
34 employer intends to cease the use of mandatory overtime.

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

37 d. The health care employer shall, before utilizing mandatory overtime
38 provisions and requiring an on-duty employee to remain, make a good
39 faith effort to have overtime covered on a voluntary basis, including,
40 but not limited to, calling per diems, agency nurses, assigning floats,
41 or requesting an additional day of work from off-duty employees, to the
42 extent such staffing options exist. Failure to engage in a good faith
43 effort pursuant to this section shall be a violation. Any employee who
44 has been required to work in violation of this section may file a
45 complaint with the enforcement officer alleging such violation. Any
46 complaint made pursuant to this paragraph must be made in good faith.

47 § 2. This act shall take effect immediately.