

STATE OF NEW YORK

970

2023-2024 Regular Sessions

IN ASSEMBLY

January 11, 2023

Introduced by M. of A. GUNTHER -- 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; and to amend a chapter of the laws of 2022 amending the labor law relating to the restrictions on consecutive hours of work for nurses, as proposed in legislative bills numbers S. 1997-A and A. 286-A, in relation to the effectiveness thereof

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

1 Section 1. Paragraph c of subdivision 3 and subdivision 5 of section
2 167 of the labor law, as amended by a chapter of the laws of 2022 amend-
3 ing the labor law relating to the restrictions on consecutive hours of
4 work for nurses, as proposed in legislative bills numbers S. 1997-A and
5 A. 286-A, are amended and a new subdivision 7 is added to read as
6 follows:

7 c. where a health care employer determines there is an emergency,
8 necessary to provide safe patient care[~~, in which case the health care~~
9 ~~provider shall, before requiring an on-duty employee to remain, make a~~
10 ~~good faith effort to have overtime covered on a voluntary basis, includ-~~
11 ~~ing, but not limited to, calling per diems, agency nurses, assigning~~
12 ~~floats, or requesting an additional day of work from off-duty employees,~~
13 ~~to the extent such staffing options exist]. For the purposes of this
14 paragraph, "emergency", including an unanticipated staffing emergency,
15 is defined as an unforeseen event that could not be prudently planned
16 for by an employer and does not regularly occur; or~~

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

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

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1 b. Any health care employer that utilizes an exception to the limita-
2 tion on mandatory overtime provisions as provided for in subdivision
3 three of this section shall notify the department when such provisions
4 are in use. If a health care employer has utilized the mandatory over-
5 time provisions as provided for in this section for fifteen days or more
6 in a given month, the employer shall report to the department and the
7 department of health: (i) the number of days mandatory overtime was
8 required; (ii) the number of employees that were required to remain on
9 duty in overtime status; and (iii) the dates and times mandatory over-
10 time was required. If a health care employer has utilized mandatory
11 overtime provisions under this section for forty-five days or more in
12 any consecutive three month period the health care employer shall file
13 with the department and the department of health an explanation for why
14 mandatory overtime was required and provide an estimate of when the
15 employer intends to cease the use of mandatory overtime.

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

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

28 6. Upon receipt of a complaint pursuant to subdivision five of this
29 section, the enforcement officer may cause such investigation to be
30 made, in consultation with the department of health and shall notify the
31 employer. If, after investigation, the commissioner determines that an
32 employer has violated this section, the commissioner shall issue to the
33 employer an order directing compliance therewith, which shall describe
34 particularly the alleged violation. A copy of such order shall be
35 provided to any employee who has filed a complaint and to his or her
36 authorized representative. The commissioner ~~shall~~ may assess the
37 employer a civil penalty in an amount not to exceed one thousand dollars
38 for a first violation, two thousand dollars for a second violation if
39 within twelve months, or three thousand dollars for a third or subse-
40 quent violation of this section if within twelve months; provided,
41 however, that the department may assess an employer a civil penalty of
42 not more than five hundred dollars for any violation of paragraph b of
43 subdivision five of this section. ~~[The employee shall receive an addi-~~
44 ~~tional fifteen percent of the overtime payment from the employer for~~
45 ~~each violation as damages.~~

46 7. The department shall develop and make available on its website a
47 poster containing information for employees on filing a complaint pursu-
48 ant to this section. Every health care employer shall display such post-
49 er in a conspicuous location accessible to employees in the workplace.

50 § 2. Section 2 of a chapter of the laws of 2022 amending the labor law
51 relating to the restrictions on consecutive hours of work for nurses, as
52 proposed in legislative bills numbers S. 1997-A and A. 286-A, is amended
53 to read as follows:

54 § 2. This act shall take effect on the ~~[sixtieth]~~ one hundred eight-
55 ieth day after it shall have become a law.

1 § 3. This act shall take effect immediately; provided however, that
2 section one of this act shall take effect on the same date and same
3 manner as a chapter of the laws of 2022 amending the labor law relating
4 to the restrictions on consecutive hours of work for nurses, as proposed
5 in legislative bills numbers S. 1997-A and A. 286-A, takes effect;
6 provided further, that paragraph d of subdivision 5 of section 167 of
7 the labor law, as added by section one of this act, shall take effect on
8 the ninetieth day after the enactment of such chapter of the laws of
9 2022.