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:

Section 1. Paragraph c of subdivision 3 and subdivision 5 of section 167 of the labor law, as amended by 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, are amended and a new subdivision 7 is added to read as follows:

c. where a health care employer determines there is an emergency, necessary to provide safe patient care[~~, in which case the health care provider shall, before 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 dioms, agency nurses, assigning floats, or requesting an additional day of work from off-duty employees, to the extent such staffing options exist~~]. 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; or

5. **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.**

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

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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.

6. Upon receipt of a complaint pursuant to subdivision five of this section, the enforcement officer may cause such investigation to be made, in consultation with the department of health and shall notify the employer. If, after investigation, the commissioner determines that an employer has violated this section, the commissioner shall issue to the employer an order directing compliance therewith, which shall describe particularly the alleged violation. A copy of such order shall be provided to any employee who has filed a complaint and to his or her authorized representative. The commissioner [~~shall~~] may assess the employer a civil penalty in an amount not to exceed one thousand dollars for a first violation, two thousand dollars for a second violation if within twelve months, or three thousand dollars for a third or subsequent violation of this section if within twelve months; provided, however, that the department may assess an employer a civil penalty of not more than five hundred dollars for any violation of paragraph b of subdivision five of this section. [~~The employee shall receive an additional fifteen percent of the overtime payment from the employer for each violation as damages.~~]

7. The department shall develop and make available on its website a poster containing information for employees on filing a complaint pursuant to this section. Every health care employer shall display such poster in a conspicuous location accessible to employees in the workplace.

§ 2. Section 2 of 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, is amended to read as follows:

§ 2. This act shall take effect on the [~~sixtieth~~] one hundred eightieth day after it shall have become a law.

§ 3. This act shall take effect immediately; provided however, that section one of this act shall take effect on the same date and same manner as 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, takes effect; provided further, that paragraph d of subdivision 5 of section 167 of the labor law, as added by section one of this act, shall take effect on the ninetieth day after the enactment of such chapter of the laws of 2022.