STATE OF NEW YORK

9111

IN SENATE

April 26, 2024

Introduced by Sen. MAYER -- read twice and ordered printed, and when printed to be committed to the Committee on Labor

AN ACT to amend the labor law, in relation to restricting consecutive hours of work for health care workers

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

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

Restrictions on consecutive hours of work for nurses **and health care workers**. 1. When used in this section:

a. "Health care employer" shall mean any individual, partnership, association, corporation, limited liability company or any person or group of persons acting directly or indirectly on behalf of or in the interest of the employer, which provides health care services (i) in a facility licensed or operated pursuant to article twenty-eight of the public health law, including any facility operated by the state, a political subdivision or a public corporation as defined by section sixty-six of the general construction law, or (ii) in a facility operated by the state, a political subdivision or a public corporation as defined by section sixty-six of the general construction law, operated or licensed pursuant to the mental hygiene law, the education law, the correction law, or section five hundred four of the executive law.

b. "Nurse" shall mean a registered professional nurse or a licensed practical nurse as defined by article one hundred thirty-nine of the education law who provides direct patient care.

c. "Regularly scheduled work hours", including pre-scheduled on-call time and the time spent for the purpose of communicating shift reports regarding patient status necessary to ensure patient safety, shall mean those hours a nurse **or health care worker** has agreed to work and is normally scheduled to work pursuant to the budgeted hours allocated to the nurse's **or health care worker's** position by the health care employer; and if no such allocation system exists, some other measure general-

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

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ly used by the health care employer to determine when an employee is minimally supposed to work, consistent with the collective bargaining agreement, if any. Nothing in this section shall be construed to permit an employer to use on-call time as a substitute for mandatory overtime.

d. "Health care worker" shall mean personnel employed by or contracted to work for a health care employer who have an effect upon the delivery of quality care to patients, including but not limited to unlicensed assistive personnel, service, maintenance, clerical, professional and technical workers, and all other health care workers. For purposes of this section, doctors, interns, residents and facility management personnel, as well as any correctional facility security personnel not providing health care services, shall not be considered a health care worker.

2. a. Notwithstanding any other provision of law no health care employer shall require a nurse **or health care worker** to work more than that nurse's **or health care worker's** regularly scheduled work hours, except pursuant to subdivision three of this section.

b. Nothing in this section shall prohibit a nurse **or health care worker** from voluntarily working overtime.

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 **or health care worker** is employed or in a contiguous county; or

b. a federal, state or county declaration of emergency in effect in the county in which the nurse **or health care worker** is employed or in a contiguous county; 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; or

d. an ongoing medical or surgical procedure in which the nurse **or health care worker** 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 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 **or health care worker** pursuant to any other law, regulation, or collective bargaining agreement.

§ 2. This act shall take effect on the sixtieth day after it shall have become a law.