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Rhode Island recently became the tenth state in the country to prohibit mandatory overtime for nurses and nurse assistants.

Health Care Edition

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specifically for the Healthcare Industry

Rhode Island Becomes the 10th State to Prohibit Mandatory Overtime for Nurses

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On October 30, 2007, the Rhode Island General Assembly overrode the Governor's veto and enacted a law prohibiting mandatory overtime for nurses and nurse assistants in Rhode Island hospitals. The law prohibits requiring nurses to work longer than their agreed-upon shifts of either eight, ten or twelve hours and at no time longer than twelve consecutive hours. The law becomes effective March 4, 2008.

Who is Covered Under the Law?

The law covers nurses and certified nurse assistants in any private, public or state hospital in Rhode Island. The law only applies to individuals paid on an hourly basis and does not include those paid an annual salary or those who are working a pre-scheduled on-call shift in a hospital's surgical department.

Prohibitions Under the Law

Hospitals are prohibited from requiring covered employees to work overtime in excess of their predetermined eight, ten or twelve hour shifts. A hospital is likewise prohibited from discriminating, dismissing, discharging or taking any adverse employment action against a nurse or certified nurse assistant who refuses to work overtime in accordance with the statute. As the law only applies to hourly paid employees, nurse managers paid on a salary basis may be required to work as many hours as necessary.

Employers should note that the law

does not prohibit or limit the amount of voluntary overtime worked by employees.

Exceptions

The law provides an exception against the prohibition of mandatory overtime where "unforeseeable emergent circumstances" exist. *Unforeseeable emergent circumstances* means "an unpredictable occurrence relating to health care delivery that requires immediate action, and which shall include a major power outage, a public health emergency, an irregular increase in patient census, or an irregular increase in the number of employees not reporting for predetermined scheduled work shifts." Further, in order to take advantage of the unforeseeable emergent circumstances exception, the hospital must show: "(1) the overtime is required only as a last resort and is not used to fill vacancies resulting from chronic short staffing; and (2) [the hospital] has exhausted reasonable efforts to obtain staffing."

Penalties

Employers who violate the law face a fine of up to \$300, which shall be enforced by the Department of Labor and Training.

Mandatory Overtime in Other Jurisdictions

Rhode Island joins a growing number of states that have prohibited or restricted mandatory overtime for nurses. The other states that prohibit or restrict mandatory

overtime are Connecticut, Illinois, Maine, Maryland, Minnesota, New Jersey, Oregon, Washington and West Virginia.

Additionally, there is federal legislation pending to restrict mandatory overtime for nurses. The Safe Nursing and Patient Care Act, introduced by Representatives Peter Stark (D-CA) and Steven LaTourette (R-OH), as well as Senator Ted Kennedy (D-MA) would prohibit hospitals and other health care providers subject to Medicare from mandating that a nurse work in excess of any of the following: (1) the nurse's scheduled work shift or duty period; (2) 12 hours in a 24-hour period; or (3) 80 hours in a consecutive 14-day period, except for declared state of emergencies, which would not include staff shortages due to labor disputes or consistent understaffing at a hospital. The legislation would also prohibit taking any adverse action against an employee for his or her refusal to work overtime. The companion House and Senate bills are still in committee and have yet to be voted upon by either body.

What Happens Now?

It is difficult to determine at this point precisely what effect this law will have on the safe and efficient operation of hospitals. An unintended consequence of the law could be that hospitals are forced to call in more employees to work hours that need coverage. While the law prohibits mandating employees to work beyond their regularly scheduled shift, it says nothing about calling in employees to work when they are not scheduled to work. Faced with the equally unappealing possibilities of not having enough nurses to cover a shift and the potential for fines for mandating overtime for nurses who are currently working, hospitals may have no choice but to call in off-duty workers to provide an adequate level of patient care.

Also, the precise definition of *unforeseeable emergent circumstances* will have to be developed. For example, if an employee is required to work overtime because their replacement calls in sick at the last moment, will this be considered an

“unforeseeable emergent circumstance?” Perhaps, but the argument will likely be made that the overtime is only necessary because of “chronic short staffing” or because “reasonable efforts” were not made to obtain staffing.

Finally, it remains to be seen whether or not this law will actually improve patient safety - its stated purpose. It seems incongruous that if the intention is to improve patient safety by limiting overtime for nurses, salaried nurses may work as long as necessary. It is not clear why a nurse paid on an hourly basis represents a safety risk after working a certain number of hours, but a nurse paid on a salary basis does not.

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