

THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL

No. 834

Session of
2007

INTRODUCED BY SURRA, DIGIROLAMO, SOLOBAY, BELFANTI, BIANCUCCI, BISHOP, BRENNAN, BUXTON, CALTAGIRONE, CAPPELLI, CARROLL, CASORIO, CLYMER, COHEN, COSTA, DeLUCA, DePASQUALE, DERMODY, DeWEESE, EACHUS, FABRIZIO, FREEMAN, GALLOWAY, GEORGE, GERBER, GERGELY, GIBBONS, GOODMAN, GRUCELA, HALUSKA, HARHAI, HARKINS, JAMES, JOSEPHS, KOTIK, LEACH, MANDERINO, MARKOSEK, MARSHALL, McCALL, McILHATTAN, MELIO, MILLARD, MUNDY, MURT, O'NEILL, PALLONE, PARKER, PETRONE, RAMALEY, RAYMOND, ROAE, SAINATO, SAMUELSON, SANTONI, SEIP, SHAPIRO, SHIMKUS, SIPTROTH, McILVAINE SMITH, STABACK, STURLA, TANGRETTI, R. TAYLOR, WAGNER, WALKO, WANSACZ, J. WHITE, YOUNGBLOOD, YUDICHAK, ELLIS, DALEY, PHILLIPS, SCAVELLO, REED, LEVDANSKY, CREIGHTON, M. KELLER, McGEEHAN, K. SMITH, PASHINSKI, BENNINGTON, PRESTON, KESSLER, MAHONEY, LENTZ, PETRARCA AND READSHAW, MARCH 19, 2007

SENATOR ARMSTRONG, APPROPRIATIONS, IN SENATE, RE-REPORTED AS AMENDED, OCTOBER 6, 2008

AN ACT

1 Relating to hours of employment of ~~health-care~~ HEALTH CARE ←
2 employees; providing for penalties and remedies; and imposing
3 powers and duties on the Department of Labor and Industry.

4 The General Assembly of the Commonwealth of Pennsylvania
5 hereby enacts as follows:

6 Section 1. Short title.

7 This act shall be known and may be cited as the Prohibition
8 of Excessive Overtime in Health Care Act.

9 Section 2. Definitions.

10 The following words and phrases when used in this act shall
11 have the meanings given to them in this section unless the

1 context clearly indicates otherwise:

2 "Clinical care services." The diagnostic, treatment, or
3 rehabilitative services provided in a health care facility,
4 including the following: radiology and diagnostic imaging, such
5 as magnetic resonance imaging and positron emission tomography;
6 radiation therapy; phlebotomy; electrocardiogram and
7 electroencephalography; and laboratory medical services.

8 "Department." The Department of Labor and Industry of the
9 Commonwealth.

10 "Employee." An individual employed by a health care facility
11 or by the Commonwealth or a political subdivision or
12 instrumentality of the Commonwealth who is involved in direct
13 patient care activities or clinical care services and who
14 receives an hourly wage or is classified as a nonsupervisory
15 employee for collective bargaining purposes. The term includes
16 an individual employed through a personnel agency that contracts
17 with a health care facility to provide personnel. The term does
18 not include a physician; physician assistant; dentist; or worker
19 involved in environmental services, clerical, maintenance, food
20 service or other job classification not involved in direct
21 patient care and clinical care services.

22 "Health care facility." A facility which provides clinically
23 related health services, regardless of whether the operation is
24 for profit or nonprofit and regardless of whether operation is
25 by the private sector or by State or local government.

26 (1) The term includes all of the following:

27 (i) A general or special hospital, a psychiatric
28 hospital, a rehabilitation hospital, a hospice, an
29 ambulatory surgical facility, a long-term care nursing
30 facility, a cancer treatment center using radiation

1 therapy on an ambulatory basis and an inpatient drug and
2 alcohol treatment facility.

3 (ii) A facility which provides clinically related
4 health services and which is operated by the Department
5 of Corrections, the Department of Health, the Department
6 of Military and Veterans Affairs or the Department of
7 Public Welfare.

8 (iii) A mental retardation facility operated by the
9 Department of Public Welfare.

10 (2) The term does not include any of the following:

11 (i) An office used primarily for the private or
12 group practice by a health care practitioner.

13 (ii) A facility providing treatment solely on the
14 basis of prayer or spiritual means in accordance with the
15 tenets of a church or a religious denomination.

16 (iii) A facility conducted by a religious
17 organization for the purpose of providing health care
18 services exclusively to clergy or other individuals in a
19 religious profession who are members of the religious
20 denomination conducting the facility.

21 "On-call time." Time spent by an employee who is not
22 currently working on the premises of the place of employment but
23 who:

24 (1) is compensated for availability; or

25 (2) as a condition of employment, has agreed to be
26 available to return to the premises of the place of
27 employment on short notice if the need arises.

28 "Reasonable efforts." Attempts by a health care facility to:

29 (1) seek persons who volunteer to work extra time from
30 all available qualified staff who are working at the time of

1 the unforeseeable emergent circumstance;

2 (2) contact all qualified employees who have made
3 themselves available to work extra time;

4 (3) seek the use of per diem staff; or

5 (4) seek personnel from a contracted temporary agency
6 when such staff is permitted by law or regulation.

7 ~~"Unforeseeable emergent circumstance."~~ Either of the <—
8 following:

9 ~~(1) An unforeseeable declared national, State or~~
10 ~~municipal emergency.~~

11 ~~(2) A catastrophic event which is unpredictable or~~
12 ~~unavoidable and which substantially affects or increases the~~
13 ~~need for health care services.~~

14 "UNFORESEEABLE EMERGENT CIRCUMSTANCE." ANY OF THE FOLLOWING: <—

15 (1) AN UNFORESEEABLE DECLARED NATIONAL, STATE OR
16 MUNICIPAL EMERGENCY.

17 (2) A HIGHLY UNUSUAL OR EXTRAORDINARY EVENT WHICH IS
18 UNPREDICTABLE OR UNAVOIDABLE AND WHICH SUBSTANTIALLY AFFECTS
19 THE PROVISION OF NEEDED HEALTH CARE SERVICES OR INCREASES THE
20 NEED FOR HEALTH CARE SERVICES. THIS PARAGRAPH INCLUDES:

21 (I) AN ACT OF TERRORISM;

22 (II) A NATURAL DISASTER; AND

23 (III) A WIDESPREAD DISEASE OUTBREAK.

24 (3) UNEXPECTED ABSENCES, DISCOVERED AT OR BEFORE THE
25 COMMENCEMENT OF A SCHEDULED SHIFT, WHICH COULD NOT BE
26 PRUDENTLY PLANNED FOR BY AN EMPLOYER, AND WHICH WOULD
27 SIGNIFICANTLY AFFECT PATIENT SAFETY.

28 The term does not include vacancies that arise as a result of
29 chronic short staffing.

30 Section 3. Prohibition of mandatory overtime.

1 (a) General rule.--Except as set forth in subsection (c),
2 all of the following apply:

3 (1) A health care facility may not require an employee
4 to work in excess of an agreed to, predetermined and
5 regularly scheduled daily work shift.

6 (2) This subsection shall not be construed to prevent an
7 employee from voluntarily accepting work in excess of these
8 limitations.

9 (3) This subsection shall not be construed:

10 (i) To prevent an employee from working an agreed
11 to, predetermined and regularly scheduled daily work
12 shift that is greater than eight hours.

13 (ii) To preclude the hiring of part-time or per diem
14 employees by a health care facility.

15 (b) Retaliation prohibited.--The refusal of an employee to
16 accept work in excess of the limitations set forth in subsection
17 (a) shall not be grounds for discrimination, dismissal,
18 discharge or any other employment decision adverse to the
19 employee.

20 (c) Exception.--The provisions of subsection (a) shall not
21 apply to any of the following:

22 (1) On-call time. Nothing in this paragraph shall be
23 construed to permit a health care facility or employer to use
24 on-call time as a substitute for mandatory overtime or a
25 means of circumventing the intent of this act.

26 (2) If an unforeseeable emergent circumstance occurs
27 and:

28 (i) the assignment of additional hours is used as a
29 last resort;

30 (ii) the health care facility or employer has

1 exhausted reasonable efforts to obtain other staffing;
2 and

3 (iii) the health care facility or employer provides
4 the employee up to one hour to arrange for the care of
5 the employee's minor child or elderly or disabled family
6 member.

7 (3) When an employee is required to work overtime to
8 complete a patient care procedure already in progress if the
9 absence of the employee could have an adverse effect on the
10 patient.

11 (d) Off-duty time.--An employee who is required to work more
12 than 12 consecutive hours per workday pursuant to subsection (c)
13 or who volunteers to work more than 12 consecutive hours shall
14 be entitled to at least ten consecutive hours of off-duty time
15 immediately after the worked overtime. An employee may
16 voluntarily waive the requirements of this subsection.

17 Section 4. Collective bargaining.

18 Nothing in this act shall prevent an employer or health care
19 facility from providing employees more protection from mandatory
20 overtime than the minimum established under this act.

21 Section 5. Regulations.

22 The department shall, within 18 months of the effective date
23 of this section, promulgate regulations to implement this act.

24 Section 6. Penalties.

25 (a) Administrative fine.--The department may levy an
26 administrative fine on a health care facility or employer that
27 violates this act or any regulation issued under this act. The
28 fine shall be not less than \$100 nor greater than \$1,000 for
29 each violation.

30 (b) Administrative order.--The department may order a health

1 care facility to take an action which the department deems
2 necessary to correct a violation of section 3.

3 (c) Administrative Agency Law.--This section is subject to 2
4 Pa.C.S. Ch. 5 Subch. A (relating to practice and procedure of
5 Commonwealth agencies) and Ch. 7 Subch. A (relating to judicial
6 review of Commonwealth agency action).

7 Section 20. Effective date.

8 This act shall take effect as follows:

9 (1) The following provisions shall take effect
10 immediately:

11 (i) Section 5.

12 (ii) This section.

13 (2) The remainder of this act shall take effect ~~in 90~~ <—
14 ~~days~~ JULY 1, 2009. <—