

PENNSYLVANIA'S PROHIBITION OF EXCESSIVE OVERTIME IN HEALTH CARE ACT EFFECTIVE JULY 1, 2009

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On July 1, 2009, Pennsylvania's Prohibition of Excessive Overtime in Health Care Act (hereinafter the Act) becomes effective. The Act limits overtime work for covered healthcare facility employees.

Covered Facilities

The Act applies to covered healthcare facilities, including all profit and non-profit hospitals, hospices, ambulatory surgical facilities, long-term care nursing facilities, certain cancer treatment centers, and inpatient drug and alcohol treatment facilities. These covered facilities "may not require an employee to work in excess of an agreed to, predetermined, and regularly scheduled daily work shift."

The Act does not explicitly impose a duty on covered facilities to agree in writing with its employees on a "predetermined and regularly scheduled daily work shift." However, even if not statutorily required, covered facilities should commit agreements regarding regularly scheduled work shifts to writing. Notably, the Act does not set a maximum number of hours that covered employees may work.

Covered Employees

Employees protected under the Act include those who receive an hourly wage or are classified as non-supervisory, for collective bargaining purposes, and who are involved in direct patient or clinical care activities. Such employees typically include nurses, technicians, technologists, certified nursing assistants, and phlebotomists. The Act does not apply to physicians, physician assistants, dentists, or workers who perform jobs not involved in direct patient and clinical care services.

Exceptions

The Act provides three exceptions, which allow covered facilities to require employees to work

beyond regularly scheduled shifts. First, covered facilities may require employees to work additional hours if there is an unforeseen "emergent circumstance." Emergent circumstances cannot arise from chronic short staffing. Instead, emergent circumstances include:

1. an unforeseeable declared national, state, or municipal emergency;
2. highly unusual or extraordinary events which are unpredictable or unavoidable and which substantially affect services offered by the covered facility, including acts of terrorism, natural disasters, or widespread health threats; or
3. unexpected absences, discovered at or before commencement of a scheduled shift, which could not be prudently planned for by an employer, and which would significantly affect patient safety.

A covered facility must also demonstrate that:

1. the assignment of additional hours is used as a last resort;
2. it exhausted all required reasonable efforts to meet demands; and
3. it provided up to one hour to arrange for the care of employees' minor children and elderly or disabled family members.

The second exception arises when employees are required to work overtime to complete a patient care procedure already in progress. Under this exception, the employer must show that the absence of employees could have an adverse effect on patients. Under these circumstances, facilities may require employees to remain at work beyond regularly scheduled shifts.

Finally, the Act does not apply when covered employees are on an “on-call” status. This includes time spent by employees who are not currently working on the premises of the place of employment, but who either receive compensation for remaining available on short notice or, as a term of employment, agree to be available on short notice.

Notwithstanding these exceptions, if covered employees work more than 12 consecutive hours, they are entitled to 10 consecutive hours of off-duty time unless the employee waives his or her right to the 10 consecutive hours off.

Enforcement

The Pennsylvania Department of Labor and Industry, which will issue accompanying regulations by April 2010, is charged with enforcing the Act. The Act authorizes the Department to assess administrative fines of \$100 to \$1,000 for each violation. The Department may also order a facility to take an action it deems necessary to correct a violation of the Act.

Action Required

The Act will significantly change how covered facilities schedule employees. With the July 1, 2009, effective date rapidly approaching, covered facilities should immediately inform their administrative staff on how to comply with the Act.

If you have any questions about this Alert, or would like additional information, please do not hesitate to contact a member of our Labor and Employment Practice Group.

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This alert should not be construed as legal advice or legal opinion on any specific facts or circumstances. The contents are intended for general informational purposes only, and you are urged to consult a lawyer concerning your own situation with any specific legal question you may have.

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