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## Health Employment & Labor Law Blog

LABOR AND EMPLOYMENT LAW FOR THE HEALTHCARE INDUSTRY

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# Massachusetts Bans Mandatory Overtime for Nurses: Nurses Association Applauds

By: Amy J. Traub and Ian Gabriel Nanos

A new law in Massachusetts prohibits hospitals from requiring nursing staff to work mandatory overtime under most circumstances. The law, which will go into effect in 90 days, has strong support from the Massachusetts Nurses Association/National Nurses United. Citing increased chances for costly mistakes and the dangers to patients associated with mandatory overtime, representatives of the Nurses Association applauded the measure, stating that it will protect patients and ensure safe, quality patient care, while saving money.

Employers should be aware that this may be something of a growing trend. Indeed, Massachusetts was not the first state to consider a law of this nature. New York State, for example, enacted a similar measure. Though less burdensome than its Massachusetts counterpart, the New York Law prohibits health care employers from mandating that a nurse work hours over and above the predetermined and regularly scheduled work hours the nurse has agreed to work, absent the existence of several exceptions, including a “health care disaster,” “declaration of emergency,” where the hospital determines there is a “patient care” emergency, or an “ongoing medical or surgical procedure” that requires the nurse’s continued presence.

What Employers Need to Know Regarding the New Massachusetts Law:

- Under the law, regularly scheduled hours cannot exceed more than 12 hours in any 24-hour period.
- While the law generally prohibits mandatory overtime, it creates an exception for emergency situations “where the safety of the patient requires its use and when there is no reasonable alternative.” The health policy commission will be developing guidelines to determine what might constitute an emergency, and they will be soliciting comments through public hearing on that process.
- In the event that emergency situations create a need for overtime, the facility is required to first make a good faith effort to provide overtime coverage on a voluntary basis before instituting mandatory overtime.
- Nurses will not be allowed, however, to exceed 16 consecutive hours worked in a 24-hour period, and, if working 16 consecutive hours, that nurse must be given at least 8 consecutive hours of off-duty time to complete that 24 hour period.
- Hospitals are to report all instances of mandatory overtime, along with the circumstances requiring that overtime, to the Department of Public Health, and the reports will be public documents.

Employers should be aware that the statute provides an anti-retaliation measure, making it unlawful for an employer to treat a nurse's refusal to accept work in excess of the limitations set forth in the statute as a basis for discriminating again, dismissing, or taking any other employment action against that nurse.

Existing collective bargaining agreements will remain in effect, and the statute provides that it shall not be construed to limit, alter, or modify the terms of any such collective bargaining agreements or to diminish or waive other existing rights for nurses.

The law also specifically indicates that mandatory overtime shall not be used to provide appropriate staffing for the level of patient care required, which presumably would include meeting staffing needs that result from nurses calling in sick from their regularly scheduled shift. Thus, facilities need to be sure to accurately assess their needs and develop appropriate measures to address various contingencies.

Employers should review their overtime and scheduling practices accordingly.

Tags: mandatory, Massachusetts Nurses Association, National Nurses United, Nursing Staff, overtime for nurses

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