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NEW YORK
STATE OF
OPPORTUNITY.

Department
of Labor

RESTRICTIONS ON CONSECUTIVE HOURS OF WORK FOR NURSES

MANDATORY NURSE OVERTIME

AUTHORITY

- Labor Law Section 167
- Regulations Part 177

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MANDATORY OVERTIME IS PROHIBITED

- Health care employers may not require Nurses to work more than their regularly scheduled shift, unless there is a bona fide emergency.
- “Overtime” in this context means work hours over and above the predetermined and regularly scheduled hours a nurse agreed to work.
- “Overtime” in this context does not mean 40 hours or that the employee need be paid at a premium or higher rate of pay.
- Health Care Employers must have a Nurse Coverage Plan.

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Q: WHICH EMPLOYERS ARE CONSIDERED HEALTH CARE EMPLOYERS UNDER THIS LAW?

A: Employers who provide health care services in facilities:

- Licensed or operated under Article 28 of the Public Health Law (including public sector facilities), or
- Public facilities operated or licensed under mental hygiene, education or corrections law.

Examples include: nursing homes, hospitals, adult day care facilities, residential drug and alcohol treatment facilities, and others.

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Q: ARE ALL NURSES COVERED BY THIS LAW?

A: The law covers Registered Professional Nurses (RN) or Licensed Practical Nurses (LPN) who:

- Provide direct patient care, or
- Work for covered Health Care Employers.

Note: This applies regardless of employment basis (e.g. full-time, part-time, per diem, contract nurses, registry nurses, independent contractors, or agency nurses).

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Q: WHAT ARE REGULARLY SCHEDULED WORK HOURS FOR NURSES?

A: These are the predetermined number of hours a nurse:

- Has agreed to work, and
- Is normally scheduled to work, including prescheduled on-call time, and time communicating “shift reports.”

Notes:

- *Employers may NOT use on-call shifts as a substitute for mandatory overtime.*
- *Regularly scheduled work hours must be interpreted in line with applicable collective bargaining agreements.*

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Q: ARE THERE EXCEPTIONS TO THE PROHIBITION ON MANDATING OVERTIME?

A: Yes, an employer may legally mandate overtime if there is:

- A health care disaster (e.g., fires, auto accidents, a building collapse, etc.), or
- A government declaration of emergency, or
- An ongoing medical or surgical procedure, or
- A patient care emergency.

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Q: WHAT IS A PATIENT CARE EMERGENCY?

A: For the purposes of this paragraph, “patient care emergency,” including an unanticipated staffing emergency, is defined as:

- An unforeseen event that could not be prudently planned for and does not regularly occur, and
- Where a health care employer determines there is an emergency, necessary to provide safe patient care, and
- Where before requiring an on-duty employee to remain, the employer makes a good faith effort to have overtime covered on a voluntary basis.

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Q: WHAT SHOULD HEALTH CARE EMPLOYERS DO TO COMPLY WITH THIS LAW?

A: Health care employers are required to implement a Nurse Coverage Plan that takes into account typical patterns of absenteeism.

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Q: WHAT SHOULD A NURSE COVERAGE PLAN INCLUDE?

A: Health care employers must implement a Plan that:

- Accounts for typical patterns of staff absenteeism due to:
 - Illness
 - Leaves
 - Other similar and known factors
- Reflects the health care employer's typical levels and types of patients served by the health care facility

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NURSE COVERAGE PLANS CONTINUED

Nurse Coverage Plans must also:

- Identify and describe all alternative staffing methods available to the health care employer, including, but not limited to:
 - contracts with per diem nurses, nurse registries or employment agencies,
 - assignment of nursing floats,
 - requesting coverage work from off-duty nurses, and/or
 - posting of a list of nurses seeking voluntary overtime.

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Q: MUST THE NURSE COVERAGE PLAN BE GIVEN TO NURSES?

A: Yes. Health care employers are required to make their Nurse Coverage Plan readily available to all nursing staff by:

- Posting or placing it in an accessible location, or
- Distributing the plan electronically to nurses.

Employers must also provide the Plan to:

- Any union representing nurses at the health care facility.
- The Commissioner of Labor, or his or her designee, upon request.

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Q: CAN A NURSE VOLUNTEER TO WORK OVERTIME?

A: Yes. The law does not prohibit nurses from voluntarily working in excess of their regularly scheduled hours.

Note: Health care employers may not use waivers as an alternative to compliance with this law.

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ROLE OF THE DOL

- Investigate complaints made by nurses, or their representatives
 - Request records, schedules, Nurse Coverage Plan, documentation of efforts to seek coverage
- Determine adequacy of Nurse Coverage Plan
- Determine validity of allegation
- Issue violations based on findings

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RESOURCES

- Web: www.labor.ny.gov
- Home > Laws & Regulations > Employment Laws > Mandatory Overtime for Nurses
- https://labor.ny.gov/workerprotection/laborstandards/workers_rights/Mandatory_OT_home.shtm
- E-mail: Lsask@labor.ny.gov
- Phone: 1-888-469-7365

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