

Safe Patient Care Act

AN ACT protecting the health and well-being of patients and health care workers and their families by limiting the number of mandatory overtime hours health care workers may be required to work.

Section 1. Short Title. This Act may be cited as “The Safe Patient Care Act.”

Section 2. Findings. The Legislature finds that:

- A. **[Insert the name of your state here]** is experiencing a critical shortage of qualified, competent health care workers.
- B. The use of mandatory overtime has contributed to the shortage by creating increasingly stressful working conditions in many hospitals and healthcare institutions.
- C. The practice of requiring health care workers to work extended shifts and forego days off causes health care workers to frequently provide care in a state of fatigue, contributing to medical errors and other consequences that compromise patient safety.
- D. The use of mandatory overtime puts severe pressure on families, as many nurses and health professionals who care for children or aging parents at home are unexpectedly required to work additional hours beyond their shifts.
- E. To safeguard the health of patients as well as the health, efficiency, and general well-being of health care workers, the legislature finds, as a matter of public policy, that mandatory overtime should be prohibited except in the case of an unforeseeable emergency circumstance in order to ensure that the public will continue to receive safe, quality care.
- F. Limitations on mandatory overtime will ensure that health care facilities throughout the state operate in a manner that safeguards public safety, guarantees the delivery of quality health care services and facilitates the retention and recruitment of health care workers.

Section 3. Definitions. As used in this act:

- A. "Employee" means an individual employed by a health care facility who is involved in direct patient care activities or clinical services, but shall not include physicians.
- B. "Employer" means an individual, partnership, association, corporation or person or group of persons acting directly or indirectly in the interest of a health care facility.
- C. "Health Care Facility" means a health care facility licensed by the State, a developmental disability or rehabilitation center, blood bank, assisted living center, or any agency licensed by or registered with the State or local government to provide either health or mental health care.
- D. "On-call time" means time spent by an employee who is not currently working on the premises of the place of employment but who is compensated for availability, or as a condition of employment has agreed to be available, to return to the premises of the place of employment on short notice if the need arises.

- E. "Overtime" means the hours worked in excess of an agreed upon, predetermined, regularly scheduled shift or hours worked in excess of twelve hours in a twenty-four hour period or eighty hours in a consecutive fourteen-day period.
- F. "Reasonable efforts" means that the employer shall:
 - 1) seek persons who volunteer to work extra time from all available qualified staff who are working at the time of the unforeseeable emergency circumstance;
 - 2) contact all qualified employees who have made themselves available to work extra time; and
 - 3) seek the use of qualified per diem or agency staff.
- F. "Qualified" mean employees with requisite credentials in the same job classification.
- G. "Declared state of emergency" means an officially designated state of emergency that has been declared by the Federal government or the head of the appropriate state or local governmental agency having authority to declare that the State, county, municipality or locality is in a state of emergency, but does not include a state of emergency that results from a labor dispute in the health care industry or consistent understaffing.

Section 4. Prohibitions.

- A. The requirement or attempt to compel, coerce or force an employee of a health care facility to work overtime, except in the case of a declared state of emergency, is contrary to public policy, and any such requirement contained in a contract, agreement or understanding is void.
 - 1) The acceptance by any employee of overtime is strictly voluntary.
 - 2) No employer shall retaliate, discriminate, discharge, dismiss, threaten, report to any regulatory agency, licensing authority or accrediting body, or engage in any other adverse employment action against an employee who refuses to accept overtime work, and reporting by the employer of a health care worker to a state regulatory board after the employee refuses to accept overtime work shall be considered prima facie evidence of retaliatory conduct.
 - 3) No employer shall retaliate, discriminate, dismiss, threaten, report to any regulatory agency, licensing authority or accrediting body, or engage in other adverse employment action against an employee who:
 - a) reports a violation or suspected violation of this law;
 - b) initiates, cooperates or otherwise participates in an investigation or proceeding brought by a regulatory agency, licensing authority or accrediting body concerning matters covered by this law; or
 - c) informs or discusses with other employees, with representatives of those employees, or with representatives of associations of health care professionals, violations or suspected violations of this subsection.
- B. The provisions of this section shall not apply in the case of a declared state of emergency if the employer is requested, or otherwise is expected, to provide an exceptional level of emergency of other medical services to the community.

In the event of such a declared state of emergency, the employer shall provide the employee with such necessary time, not less than one hour, prior to the commencement of the overtime work, to arrange for the care of the employee's minor children, sick, elderly, or disabled family members.

- C. The provisions of this act shall not be construed to impair or negate any employer-employee collective bargaining agreement in effect on the effective date of this Act which may offer stronger protections.
- D. Nothing in this Act shall be construed to permit an employer to use on-call time as a substitute for mandatory overtime.

Section 5. Investigation and sanctions. The **[insert the name of the appropriate agency with jurisdiction here]** is authorized to investigate complaints of violations of section 4 of this act and to issue notices and citations as provided in this section. An employee may file a complaint with **[insert the name of the appropriate agency with jurisdiction here]** against a health care facility that violates this law.

- A. Upon investigation, the **[insert the name of the appropriate agency with jurisdiction here]** shall notify the health care facility of all deficiencies in its compliance with this Act and the rules and regulations adopted hereunder. Such notice may include an order to take corrective action, within a specific time, including but not limited to
 - 1) revising the facility staffing plan;
 - 2) reducing the number of patients within a health care facility;
 - 3) temporarily closing a health care facility, department or unit; or
 - 4) temporarily transferring patients to another health care facility, department or unit within the facility until corrections are made.
- B. An employer that violates any provision of section 4 shall be subject to a citation and a civil penalty not to exceed \$10,000 per violation. An employer that violates any provision of section 4 on four or more occasions shall be subject to a citation and a civil penalty not to exceed \$15,000 per violation.
- C. In addition to the penalties prescribed in section 5(B), an employer that violates section 4(B) shall be liable for providing the employee with reinstatement, promotion, payment of lost wages and benefits, and such other equitable relief as may be appropriate.
- D. In addition to the penalties prescribed in section 5(B), the **[insert the name of the appropriate agency with jurisdiction over hospital licensing here]** is authorized, after notice and opportunity for a hearing, to suspend or revoke the license of a health care facility that repeatedly violates the provisions of section 4.

Section 6. Notice.

- A. Each health care facility shall post, and shall maintain posted, a notice of the definitions, prohibitions, investigatory actions, sanctions and remedies required by this Act in a public place. The **[insert the name of the appropriate agency with jurisdiction over investigations and sanctions here]** shall prescribe the format of the notice within six months of the enactment of this Act. The notice shall include, but is not limited to, the following language: "This facility

is prohibited by law from taking any action against any employee involved in direct patient care activities or clinical services who declines to work additional hours at the facility in excess of the normal work period.”

The notice shall also include a statement that an employee may file a complaint with the (appropriate department) against a health care facility who violates the provisions of this law, as well as information about how to file such a complaint.

- B. A health care facility that fails to post the notice required under this Act within 10 days of the publication of the regulations contained in section 6(A) shall be subject to a fine of \$1,000.00 per day for each day that the required notice is not posted.

Section 7. Authority. The [insert the names of all agencies mentioned in this act], in consultation with the attorney general, shall adopt rules and regulations pursuant to the [insert the name of the state administrative procedure act] within six months of the date of enactment of this Act, to carry out the purposes of this Act.

Section 8. Effect. This act shall take effect six months after the date of enactment.