

No. 2008-102

## AN ACT

HB 834

Relating to hours of employment of health care employees; providing for penalties and remedies; and imposing powers and duties on the Department of Labor and Industry.

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

Section 1. Short title.

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

Section 2. Definitions.

The following words and phrases when used in this act shall have the meanings given to them in this section unless the context clearly indicates otherwise:

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

“Department.” The Department of Labor and Industry of the Commonwealth.

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

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

(1) The term includes all of the following:

(i) A general or special hospital, a psychiatric hospital, a rehabilitation hospital, a hospice, an ambulatory surgical facility, a long-term care nursing facility, a cancer treatment center using radiation therapy on an ambulatory basis and an inpatient drug and alcohol treatment facility.

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

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

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

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

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

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

“On-call time.” Time spent by an employee who is not currently working on the premises of the place of employment but who:

(1) is compensated for availability; or

(2) 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.

“Reasonable efforts.” Attempts by a health care facility to:

(1) seek persons who volunteer to work extra time from all available qualified staff who are working at the time of the unforeseeable emergent circumstance;

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

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

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

“Unforeseeable emergent circumstance.” Any of the following:

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

(2) A highly unusual or extraordinary event which is unpredictable or unavoidable and which substantially affects the provision of needed health care services or increases the need for health care services. This paragraph includes:

(i) an act of terrorism;

(ii) a natural disaster; and

(iii) a widespread disease outbreak.

(3) Unexpected absences, discovered at or before the commencement of a scheduled shift, which could not be prudently planned for by an employer and which would significantly affect patient safety.

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

### Section 3. Prohibition of mandatory overtime.

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

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

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

(3) This subsection shall not be construed:

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

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

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

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

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

(2) If an unforeseeable emergent circumstance occurs and:

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

(ii) the health care facility or employer has exhausted reasonable efforts to obtain other staffing; and

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

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

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

### Section 4. Collective bargaining.

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

### Section 5. Regulations.

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

## Section 6. Penalties.

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

(b) Administrative order.—The department may order a health care facility to take an action which the department deems necessary to correct a violation of section 3.

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

## Section 20. Effective date.

This act shall take effect as follows:

- (1) The following provisions shall take effect immediately:
  - (i) Section 5.
  - (ii) This section.
- (2) The remainder of this act shall take effect July 1, 2009.

APPROVED—The 9th day of October, A.D. 2008.

EDWARD G. RENDELL