



Electronic Dispatch

# Health Care Law Information Memo

October 2008

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## MANDATORY OVERTIME FOR NURSES PROHIBITED BY NEW LEGISLATION

New York Governor David Paterson recently signed into law legislation prohibiting mandatory overtime for nurses (defined as RNs and LPNs) *unless* a statutory exception applies. With this new legislation, a health care employer may not require a nurse to work more than his or her “regularly scheduled work hours” unless one of the following exceptions exists:

- a health care disaster, such as a natural or other type of disaster that increases the need for health care personnel, unexpectedly affecting the county in which the nurse is employed or in a contiguous county;
- a federal, state, or county declaration of emergency in effect in the county in which the nurse is employed or in a contiguous county;
- where a health care provider determines that there is an emergency, making overtime necessary to provide safe patient care. In this situation, the health care provider must make a good faith effort to have overtime covered on a voluntary basis by, for example, calling per diems, agency nurses, assigning floats, or requesting an additional day of work from off-duty employees; or
- an ongoing medical or surgical procedure in which the nurse is actively engaged and whose continued presence through the completion of the procedure is needed to ensure the health and safety of the patient.

The law takes effect July 1, 2009. According to Governor Paterson’s press release, issued when he signed the legislation, the effective date of July 1, 2009 is designed to give health care employers “time to plan for implementation by increasing recruitment efforts, advancing flexible work schedules and obtaining contracts for temporary services.” The legislation is applicable to all health care employers in New York State. A “health care employer” is defined as any individual or entity that provides health care services (1) in a facility licensed or operated pursuant to Article 28 of the Public Health Law, including all state and public facilities or (2) a facility operated by the state or any political subdivision pursuant to the Mental Hygiene Law, the Education Law, or the Correction Law.

Significantly, the new law restricts employers from requiring a nurse to work more than his or her “regularly scheduled work hours.” According to the statute, “regularly scheduled work hours” include pre-scheduled on-call time and time spent communicating shift reports regarding patient status, as well as those hours a nurse has agreed to work and is normally scheduled to work pursuant to the budgeted hours allocated to the nurse’s position by the employer. The statute expressly prohibits the use of on-call time as a substitute for mandatory overtime.

This new legislation also amends the New York Education Law by adding a new section stating that an LPN’s or RN’s refusal to work beyond his or her “regularly scheduled hours” will not constitute patient abandonment or neglect. The statute does make clear that a nurse is not prohibited from voluntarily working overtime.

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Prior to July 1, 2009, health care employers will need to clearly define regularly scheduled hours of work, as well as establish contingency plans for this new legislative restriction on mandatory overtime. If you have any questions or wish to discuss options for appropriate courses of action, please contact:

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## Health Care Practice Group

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- Home health care providers
- Long-term and subacute care facilities
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