

Labor Law Bulletin

Labor and employment law trends of interest to our clients and other friends.

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ILLINOIS LAW RESTRICTING NURSE OVERTIME AWAITS GOVERNOR'S SIGNATURE

The Illinois House and Senate unanimously passed, and the Governor is expected to sign, new legislation prohibiting hospitals from requiring nurses to work mandatory overtime except in limited circumstances. Similar to requirements in ten other states, the legislation, known as Senate Bill 201 (SB-201), amends the Illinois Hospital Licensing Act and will become effective immediately when signed by the Governor. Illinois hospitals should be prepared to come into compliance on short notice.

Employees Covered by SB-201

The law protects advanced practice nurses, registered nurses, and licensed practical nurses who are paid on an hourly basis and have direct responsibility for providing or overseeing nursing care. The law does not cover certified nurse anesthetists, patient care technicians or other health care workers.

Requirements under SB-201

Under the law hospitals cannot require nurses to work mandatory overtime, except in unforeseen, emergent circumstances. "Mandatory overtime" is defined broadly to mean any time that a nurse is required to work in excess of her predetermined scheduled shift. This definition of "overtime" is different from that used by the Fair Labor Standards Act for overtime pay purposes. Thus, time worked in excess of a nurse's scheduled shift is considered overtime under SB-201 even though it may not be compensable overtime under the FLSA. (The law does not affect how overtime pay is calculated or paid.)

Under a vague exception, mandatory overtime does not include additional time worked by nurses in

"specialized units, such as surgical nursing services." Except for this example, there is no further guidance as to what constitutes a "specialized unit."

Although nurses may voluntarily work overtime, "mandatory overtime" is permissible only as a last resort when required by "unforeseen, emergent circumstances" limited to:

- a declared national, state or local disaster or other catastrophic event that substantially increases the need for health care services; or
- implementation of a hospital's disaster plan that substantially increases the need for health care services; or
- any circumstances requiring specialized nursing skills through the completion of a procedure.

Situations when a hospital does not have enough nursing staff to meet the "usual and reasonably predictable nursing needs of its patients," are not considered unforeseen, emergent circumstances permitting a hospital to require mandatory overtime. Unexpected absenteeism or variations in census presumably do not qualify as unforeseen, emergent circumstances.

Even when responding to an "unforeseen, emergent circumstance," a hospital cannot require a nurse to work more than four hours beyond her scheduled shift. Nurses who are required to work up to 12 consecutive hours must be allowed at least eight hours off after the extended shift ends.

Hospitals may not discipline, discharge or take other adverse employment action against a nurse for refusing to work mandated overtime not permitted under the law.

Enforcement

The Illinois Department of Public Health (IDPH) is charged with administering and enforcing the law. A nurse or any other hospital employee may file a complaint with the IDPH within 45 days after the alleged violation. A violation proven by clear and convincing evidence can result in suspension or revocation of the hospital's license to operate. It is unclear whether the Illinois courts will recognize a claim for wrongful discharge for nurses who contend they were discharged for refusing to work mandatory overtime.

Impact

SB-201 may have a significant impact on a hospital's scheduling and overtime practices for nursing staff. At a minimum, all hospitals should review their policies and practices to determine what, if any, changes may be

required by the new law. In addition, hospitals should consider compliance training for nurse managers and supervisors.

Vedder Price represents numerous hospitals and medical centers and has substantial experience in handling the employment and labor law challenges they face. If you have questions about the new law or how to comply, please call Bruce Alper, Tom Hancuch or any other Vedder Price attorney with whom you have worked.

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