Mandatory Overtime Bill For Hospital Nurses In Massachusetts Becomes Law

By Michael R. Bertoncini and Howard M. Bloom

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Massachusetts Governor Deval Patrick has signed into law a bill prohibiting hospitals from requiring nurses who deliver patient care to work mandatory overtime. "Mandatory overtime" is defined as "any hours worked by a nurse in a hospital setting to deliver patient care, beyond the predetermined and regularly scheduled number of hours that the hospital and nurse have agreed that the employee shall work . . . ." (The statute limits such predetermined and regularly scheduled number of hours to 12 in any 24-hour period.) Hospitals must report all instances of mandatory overtime and the circumstances requiring its use to the department of public health. These reports will be public records. The law, signed on August 6, is effective on November 4, 2012.

Under the new law, a hospital cannot require a nurse to work "mandatory overtime" except in the case of an emergency situation where the safety of the patient requires its use and when there is no reasonable alternative. However, whenever such a situation exists, the hospital must, before requiring mandatory overtime, make a "good faith effort" to cover overtime on a voluntary basis. The law prohibits a nurse from working more than 16 consecutive hours in a 24-hour period. Nurses still may work overtime voluntarily, but if the nurse works 16 consecutive hours, the nurse must be given at least eight consecutive hours of off-duty time immediately after the worked overtime. A nurse cannot be discriminated against or subjected to any adverse employment decision for refusing to accept work in excess of the limitations in the law.

The statute creates a Health Policy Commission. The Commission has been charged with developing guidelines and procedures to determine what constitutes an emergency situation under this law. In developing those guidelines, the Commission is supposed to consult with employees and employers who will be affected by the law. The Commission also is supposed to solicit comment from those parties through a public hearing.

In large part, the statute functions as a back-door minimum-staffing bill. In order to comply with the statute's restrictions on overtime, hospitals may have to hire additional full-time, part-time and/or per diem nurses. The statute admonishes that "mandatory overtime shall not be used as a practice for providing appropriate staffing for the level of patient care required."

One of the questions raised by the wording of the statute is the definition of "require." It is expected that some nurses and labor organizations will argue that, because of alleged inadequate staffing, a nurse who stayed beyond the end of her shift to complete her paperwork was "required" to do so because she could not finish her work during her regular hours as a result of inadequate staffing. In other words, she was constructively "required" to stay.

Hospitals whose nurses are represented by a union are, by the express terms of the statute, exempted from the statute to the extent their collective bargaining agreement covers the subjects contained in the statute. The law states very clearly that it "does not limit or modify any of the terms, conditions or provisions of a collective bargaining agreement between a hospital and a labor organization." Thus, for example, where a collective bargaining agreement allows a hospital to require a nurse to work overtime under any circumstance the hospital decides, that provision should take precedence over the statute's limitation on a hospital's being able to require mandatory overtime only in emergency situations. On the other hand, since few, if any, collective bargaining agreements contain requirements about reporting the amount of mandatory overtime worked to the state, the statutory reporting mandates will apply even where a collective bargaining agreement exists. It remains to be seen what position the Massachusetts Nurses Association and other unions representing hospital nurses will take regarding the interpretation of this new law under collective bargaining agreements. However, we expect they will attempt to have the law applied as broadly as possible, perhaps relying on the provision stating it is "intended as a remedial measure to protect the public health and the quality and safety of patient care."

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We will continue to keep you updated about developments as warranted. Employers are encouraged to contact their Jackson Lewis attorney with any questions regarding this new law.