
A BILL FOR AN ACT

RELATING TO MANDATORY OVERTIME FOR NURSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that many nurses across
2 the State are forced to work an extra eight to ten hour shift
3 when they are already exhausted. Not only does this impair
4 their thinking and skill level, but this also compromises
5 patient safety. A large number of hospitals use mandatory
6 overtime to cover routine personnel shortages and threaten
7 nurses who question this practice with the possibility of losing
8 their jobs or their license under the pretext of patient
9 abandonment.

10 Both nurses and hospitals are licensed and accountable to
11 the public for providing quality health care to consumers. In
12 keeping with the mandate to protect the public, the purpose of
13 this Act is to prohibit all private and public hospitals from
14 forcing nurses to work overtime, except in cases of a publicly
15 declared emergency.

16 SECTION 2. Chapter 387, Hawaii Revised Statutes, is
17 amended by adding two new sections to be appropriately
18 designated and to read as follows:



1 "§387- Nurses; mandatory overtime prohibited. (a) A
2 nurse who is employed in the practice of nursing and who:
3 (1) Is working under an alternative workweek schedule; or
4 (2) Is not working under an alternative workweek schedule
5 and who is scheduled to work eight hours in a workday;
6 shall not be required to perform any work in excess of the work
7 hours scheduled in the nurse's alternative workweek schedule,
8 eight hours if the nurse is not working under an alternative
9 workweek schedule. Under no circumstances, other than that
10 provided under subsection (c), shall an employer require a nurse
11 employed in the practice of nursing to work in excess of forty
12 hours per week, regardless of whether the nurse is working under
13 an alternative workweek schedule.

14 (b) This section shall apply to a nurse who works for a
15 private or public employer.

16 (c) This section shall not apply when a federal, state, or
17 county declaration of a state of emergency is in effect;
18 provided that the state of emergency did not result from a labor
19 dispute in the health care industry.

20 (d) An employer may require a nurse to work overtime under
21 subsection (c) only after the employer has made reasonable



1 efforts to fill its staffing needs through alternate means,
2 including:

3 (1) Requesting off-duty nurses to voluntarily report to
4 work;

5 (2) Requesting on-duty nurses to voluntarily work
6 overtime; and

7 (3) Recruiting per diem nurses to report to work.

8 (e) This section shall not apply to a nurse who is exempt
9 from overtime as an executive or administrative employee.

10 (f) Nothing in this section shall prohibit a nurse from
11 voluntarily working overtime.

12 (g) The refusal of any nurse to accept overtime work shall
13 not be grounds for discrimination, dismissal, discharge, or any
14 other penalty or employment decision adverse to the nurse. An
15 employer shall not coerce a nurse into surrendering the nurse's
16 rights under this section.

17 (h) The prohibition on the imposition of mandatory
18 overtime established under this section shall not be enforceable
19 on any collective bargaining agreement, contract, or
20 understanding in existence on the effective date of this Act.

21 All collective bargaining agreements, contracts, or
22 understandings that are continued, extended, or adopted after



1 the effective date of this Act to which nurses are a party shall
2 be subject to the prohibition on the imposition of mandatory
3 overtime established under this section.

4 §387- Exceptions. The restrictions on overtime in
5 section 387- shall not apply to the following categories of
6 advanced practice registered nurses:

7 (1) A certified nurse midwife under chapter 457, who is
8 primarily engaged in performing the duties of a nurse-
9 midwife; and

10 (2) A registered nurse-anesthetist under chapter 457, who
11 performs anesthesia services under the supervision of
12 a licensed physician."

13 SECTION 3. Section 387-1, Hawaii Revised Statutes, is
14 amended by adding three new definitions to be appropriately
15 inserted and to read as follows:

16 "Health care facility" means a health care facility
17 licensed by the State or authorized to provide care within the
18 State.

19 "Nurse" means a person who is licensed as a registered
20 nurse or licensed practical nurse under chapter 457 and who is
21 involved in direct patient care or clinical services.



1 "Overtime" means the hours worked in excess of eight hours
2 per day or forty hours per week, or in excess of the daily or
3 weekly hours provided in an alternative work schedule."

4 SECTION 4. New statutory material is underscored.

5 SECTION 5. This Act shall take effect on July 1, 2009.

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INTRODUCED BY:

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JAN 28 2009



Report Title:

Nurses; Mandatory Overtime Prohibited

Description:

Prohibits both public and private hospitals from forcing nurses to work overtime, except in cases of a federal, state, or county declared emergency. Excludes nurse midwives and nurse anesthetists from mandatory overtime requirements.

