



E-Flash Update

Pennsylvania Senate Committee Clears the Way for End of Mandatory Overtime

By a vote of 11-0, the Senate Labor and Industry Committee approved the movement of House Bill 834, as amended, to proceed to the full Senate for consideration and passage. Since a similar bill has already been passed by the House, a bill supported by the Governor, there is a very strong chance that this bill will become law this fall.

The general rule set forth in the bill titled the "Prohibition of Excessive Overtime in Health Care Act," is set forth in section 3 (a) (1) in very clear and simple language:

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

The term "health care facility" is defined broadly to include all facilities that provide "clinically related health services" and includes hospitals, medical centers and long-term care facilities whether for profit or non-profit. Physician offices are excluded.

Covered employees are individuals employed by a "health care facility" who provide "direct patient care" and/or "clinical care services." Doctors, PA's, dentists, as well as employees involved in "environmental services, clerical, maintenance, food service or other job classifications not involved in direct patient care and clinical services" are excluded from coverage under the bill.

Some exceptions are provided to the general rule of no mandatory overtime, including unforeseen national, state or local emergencies; highly unusual or extraordinary events that are unpredictable or unavoidable; and perhaps most importantly:

"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."

Even where mandatory overtime is allowed because of "unforeseeable emergent circumstances," it can only be used as a "last resort" and employees must be given one hour to arrange for the care of minor children, elderly or disabled family members. Any employee who works more than 12 consecutive hours in a workday is entitled to at least ten hours off before the start of the next work shift.

The bill does permit employees to voluntarily work overtime, and allows employers to schedule employees to be on-call. Retaliation against employees who refuse to accept an

overtime assignment in excess of the limitations set forth in the bill is expressly prohibited.

The bill, if passed, will go into effect 90 days after it is signed by the Governor.

Clearly this bill, if it becomes law, will have a dramatic and immediate impact on the authority of health care providers to schedule employees to work. This may be your last chance to contact your state senator to express your opinion of the bill.

If you have any questions about this bill please do not hesitate to contact Bill Flannery at 717-612-6022 or wflannery@postschell.com, or Andrew Allison at 215- 587-1161 or aallison@postschell.com, or any other member of the Firm's national health care practice.

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