

Pennsylvania to Begin Enforcing Mandatory Overtime Law July 1, 2009

Post & Schell, P.C. partner Paula Sanders attended an Act 102 presentation given by Robert O'Brien, Executive Deputy Secretary, and James Holzman, Deputy Chief Counsel of the Department of Labor and Industry, on Tuesday, April 13, 2009. They announced that effective July 1, 2009, the Bureau of Labor Law Compliance will begin enforcing Act 102 of 2008, the Prohibition of Excessive Overtime in Health Care Act. The Bureau may impose administrative fines ranging from \$100 to \$1,000 for each violation of the Act. Enforcement will begin even though the Bureau will not have published regulations to implement Act 102 before that date.

Act 102 provides that a health care facility may not require an employee to work in excess of an agreed to, predetermined and regularly scheduled work shift. A health care facility is prohibited from retaliating against an employee who does not agree to work overtime unless there is an unforeseeable emergent circumstance or overtime is needed to complete an on-going patient care procedure already in progress and the employee's absence could have an adverse effect on the patient.

Attached is a [White Paper](#) explaining the basic terms of Act 102.

Recommendations From O'Brien and Holzman for What Employers Should Be Doing Now:

- Become familiar with Act 102.
- Fill vacancies or try to eliminate chronic staffing shortages.
- Consider and implement on-call staffing and procedures.
- Consider hiring part-time or per diem employees.
- Consider voluntary, in-house grievance procedures.
- Update, enforce and implement:
 - Overtime policies.
 - Call off procedures.
 - Procedures for providing 10 hours of leave after overtime.
 - Arranging one hour for the care of employee's minor child or elderly or disabled family member.
- Document policies and distribute to employees.
- Create documents to demonstrate overtime was voluntary or that employee waived the 10 hour leave. Prepare to document extensively when overtime occurs, as well as the circumstances surrounding the use of the overtime and whether the overtime was mandatory or voluntary.

What Will Labor and Industry Be Doing?

- L&I will be drafting regulations even while they are enforcing Act 102. They will accept, investigate and prosecute complaints of alleged Act 102 violations. They will be posting complaint forms on their web site. They will also be posting a Frequently Asked Questions (FAQs) link on their web site sometime in May.

If you would like more information about Act 102, please call **Bill Flannery** (717-612-6022), **Paula Sanders**, (717-612-6027) or **Vince Candiello** (717-612-6024) at your earliest opportunity.

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