

Mandatory Overtime Restrictions for New Jersey Health Care Facilities

N.J.S.A. 34:11-56a31, et seq.

Conditions

- A health care facility shall not require an hourly employee who provides direct patient care to work in excess of an agreed to, predetermined and regularly scheduled daily work shift, not to exceed 40 hours per week.
“Direct patient care activities” are activities in which an employee provides direct service to patients in a clinical setting—including the emergency department, inpatient bedside, operating room or other clinical specialty treatment areas.
- Mandatory overtime cannot be used to compensate for “chronic short staffing.”
- An hourly wage employee may agree to work overtime strictly on a voluntary basis or volunteer to be on call.
- An hourly wage employee’s refusal to accept overtime shall not be grounds for retaliatory action, workplace discrimination, dismissal, discharge or any other penalty or adverse employment decision.

Exemptions

Overtime may be mandated in the case of unforeseeable, emergent circumstances only as a last resort and where the employer has exhausted reasonable efforts to obtain staffing as follows:

- Seeks individuals to volunteer to work extra time from all available, qualified staff who are working at the time of the unforeseeable, emergent circumstance;
- Contacts qualified employees who have made themselves available to work extra time;
- Seeks and makes use of per diem staff; and
- Seeks personnel from a contracted temporary agency when such staffing is permitted by law, regulation, or an applicable collective bargaining agreement.

Exhaustion of reasonable efforts is not required as follows:

- In the event of any declared, national, state or municipal emergency including, but not limited to, an act of terrorism, a disease outbreak, adverse weather conditions or natural disaster;
- When a health care facility disaster plan is activated; or
- In the event of any unforeseen disaster, natural or man-made, or other catastrophic event which substantially affects or increases the need for health care services.

The prohibition against mandatory overtime does not apply when an employee is participating in a procedure in progress and it would be detrimental to the patient’s health if the employee was not in attendance. However, this exemption does not apply for elective procedures scheduled such that the length of time ordinarily required to complete the procedure would exceed the employee’s scheduled end of shift.

Penalties

- Any employer who violates any provisions of this Act shall be guilty of a disorderly persons offense and, upon conviction, shall be punished by a fine of not less than \$100 nor more than \$1,000.
- As an alternative to, or in addition to, any other sanctions provided by law for violations, the Commissioner of Labor is authorized to assess and collect administrative penalties, up to a maximum of \$250 for a first violation and up to a maximum of \$500 for each subsequent violation.
- Each incident during which any violation of this provision occurs shall constitute a separate and distinct offense.

Enforced by: Wage and Hour Division & Contract Compliance,
NJ Department of Labor and Workforce Development, PO Box 389, Trenton, NJ 08625-0389

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