

## **PENNSYLVANIA PROHIBITION OF EXCESSIVE OVERTIME IN HEALTHCARE ACT**

Effective July 1, 2009, this Act applies to employees of health care facilities including long-term care providers and to employees involved in direct patient care activities or clinical care services and who receive an hourly wage or are classified as non-supervisory employees for collective bargaining purposes. The Act does not apply to employees in areas such as environmental services, maintenance, laundry, food services or clerical positions.

Health care facilities may not require an employee to work in excess of an agreed to, predetermined and regularly scheduled daily work shift (mandatory overtime). Employers may not discriminate, dismiss, discharge or take any adverse employment action against an employee who refuses to accept overtime work.

Regulations and guidance on how to comply with the Act are due from the Pennsylvania Department of Labor (PA DOL) in April 2010; however, the Act is effective July 1, 2009 and the PA DOL will begin enforcing the requirements at that time.

The coverage expansion occurs at the discretion of the employer and employers may raise premiums to cover the cost of extending coverage to these children for these additional years.

### **Covered Facilities**

The Act applies to private sector, nonprofit and state and local government health care facilities that provide clinically related health services, including hospitals, hospices, ambulatory surgical facilities, long-term care nursing facilities, inpatient drug and alcohol treatment facilities and outpatient cancer treatment centers. The Act also applies to certain facilities operated by the Departments of Corrections, Health, Military and Veterans Affairs and Public Welfare.

### **Covered Employees**

The Act applies to hourly and non-supervisory employees and contract personnel of covered health care facilities who are involved in direct patient or clinical care services, including diagnostic, treatment or rehabilitative services. The Act does not cover jobs that do not involve direct patient or clinical care services and explicitly excludes physicians, physicians' assistance and dentists.

### **Exceptions**

The Act includes exceptions to the general prohibition of mandatory overtime when certain conditions are met:

- **On-Call Time:** The Act does not apply to on-call time during which an employee is compensated for availability or has agreed to be available on short notice. On-call time may not be used as a substitute for mandatory overtime or as a means of circumventing the intent of the Act.
- **Unforeseeable Emergent Circumstances:** Employers may require overtime when there is a declared state of emergency and in certain circumstances that substantially affect the need for health care services. The assignment of overtime in these situations must be a last resort after reasonable efforts to obtain other staffing have been exhausted, and the employee must be given at least one hour to arrange for dependent care.
- **Unexpected Absences:** Employers may require overtime when there are unexpected absences that are discovered at or before the commencement of a scheduled shift that could not be planned for by an employer and would significantly affect patient safety. Assignment of overtime in this situation must be a

last resort after reasonable efforts to obtain other staffing have been exhausted, and the employee must be given at least one hour to arrange for dependent care.

- **Procedures in Progress:** Employees may be required to work overtime to complete a procedure already in progress if the employee's absence could have an adverse effect on the patient.

### **Penalties for Non-Compliance**

The PA DOL may assess administrative fines of \$100 to \$1,000 on a health care facility or employer for each violation. The department may also take other corrective action when necessary.