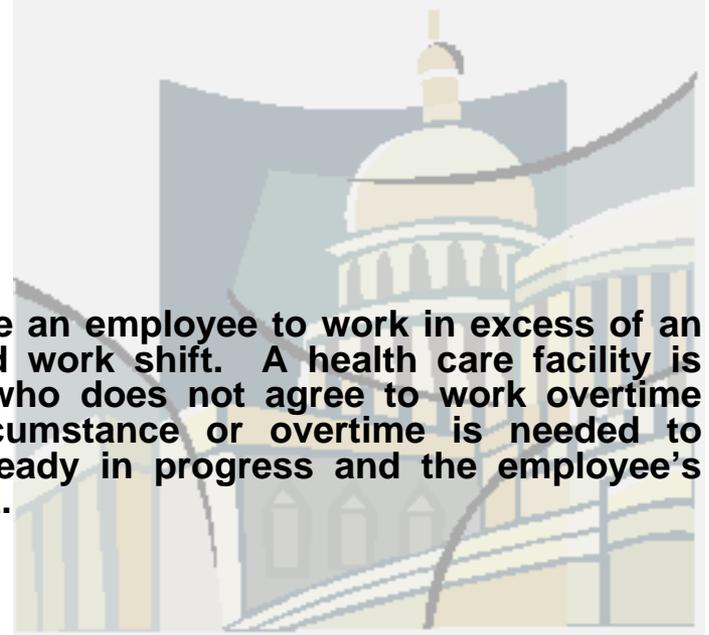


COMMONWEALTH OF PENNSYLVANIA
*
DEPARTMENT OF LABOR & INDUSTRY
*
BUREAU OF LABOR LAW COMPLIANCE

**PROHIBITION OF EXCESSIVE
OVERTIME IN HEALTH CARE ACT**

ACT 102



- **General rule:** 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.
- Signed into law on October 9, 2008.
- Takes effect on July 1, 2009. On that date, the Pennsylvania Department of Labor and Industry's Bureau of Labor Law Compliance will enforce this act and may impose administrative fines and corrective orders, following hearing, for any health care facility that violates this law. Fines range from \$100 to \$1,000 for each violation.
- The Bureau of Labor Law Compliance will also promulgate regulations to implement Act 102. However, Act 102 is in effect and will be enforced before the regulations are promulgated.
- The Bureau will also add information to its website (www.dli.state.pa.us) including Act 102, a complaint form, a summary and "frequently asked questions."

Act 102 General Provisions

- Act 102 prohibits a health care facility from requiring employees to work more than *agreed to, predetermined and regularly scheduled work shifts*. Employees covered under Act 102 are individuals involved in direct patient care or clinical care services who receive an hourly wage or who are classified as nonsupervisory employees for collective bargaining purposes.
- *Clinical care services* includes the diagnostic, treatment, or rehabilitative services, provided in a health care facility including: radiology and diagnostic imaging such as magnetic resonance imaging and positron resonance emission tomography radiation therapy, phlebotomy, electrocardiogram and electroencephalography and laboratory medical services.
- The term *direct patient care* is not defined in Act 102.

What Act 102 Does Not Do



- Act 102:
 - **Does not prevent an employee from working more than an 8-hour shift *if the this shift is agreed to and regularly scheduled.***
 - Does not prohibit overtime for on-call time, if certain *unforeseeable emergent circumstances* occur or if an employee must complete a patient care procedure already in progress at the end of regularly-scheduled shift and the employee's absence could have an adverse effect on the patient.
 - Does not prevent an employer from providing employees more protection from mandatory overtime than the minimum established under this act.
 - Employees may also agree to work any overtime. However, an employer may not retaliate against an employee who refuses 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.

Off-Duty Time



- An employee required to work more than 12 consecutive hours under the Act's exception for unforeseeable emergent circumstance or who volunteers to work more than 12 consecutive hours shall receive 10 consecutive hours of off-duty time immediately following the worked overtime. An employee may waive this off-duty time, however.

Employees Covered Under Act 102

The Bureau will enforce this act for an *employee* as the word is defined in section 2 of Act 102. An *employee* includes *all* of the following:

- An individual employed by a health care facility, the Commonwealth of Pennsylvania or one of its instrumentalities, or a political subdivision (such as a county, municipality, school district, local government).
- Who is involved in direct patient care activities or *clinical care services*.
- Who receives an hourly wage or is classified as a non-supervisory employee for collective bargaining purposes.
- An employee also includes an individual employed through a personnel agency that contracts with a health care facility to provide personnel.
- An individual is involved in *clinical care services* if the individual is involved in diagnostic imaging, treatment or rehabilitative services provided in a health care facility including the following: radiology, and diagnostic imaging, such as magnetic resonance imaging and positron emission tomography; radiation therapy; and, laboratory medical services.

Workers Outside Act 102

Act 102 Does Not Cover:

- A physician, physician assistant and dentist.
- Workers involved in environmental services, clerical, maintenance, food service or other job classification not involved in direct patient care and clinical care services.
- Individuals not employed by a *health care facility* or not meeting the Act's definition of an *Employee*.

Health Care Facility Under Act 102

(Includes Government, Private, Profit or Non-Profit)

A *health care facility* defined under section 2 of Act 102 is governed by Act 102's provisions. This facility provides clinically related health services, regardless of whether the operation is for profit or nonprofit and regardless of whether operation is by the private sector or by State or local government. These facilities include:

- A general or special hospital, a psychiatric hospital, a rehabilitation hospital, a hospice, an ambulatory surgical facility, a long-term care nursing facility, a cancer treatment center using radiation therapy on an ambulatory basis and an inpatient drug and alcohol treatment facility.
- A facility which provides clinically-related health services and which is operated by the Department of Corrections, the Department of Health, the Department of Military and Veterans Affairs or the Department of Public Welfare.
- A mental retardation facility operated by the Department of Public Welfare.

Not A Health Care Facility

The following do not constitute *health care facilities* under Act 102:

- An office used primarily for the private or group practice by a health care practitioner.
- A facility providing treatment solely on the basis of prayer or spiritual means in accordance with the tenets of a church or a religious denomination.
- A facility conducted by a religious organization for the purpose of providing health care services exclusively to clergy or other individuals in a religious profession who are members of the religious denomination conducting the facility.

Unforeseeable Emergent Circumstance

Act 102 allows mandatory overtime for *an unforeseeable emergent circumstance* which is any of the following:

- An unforeseeable declared national, state or municipal emergency.
- A highly unusual or extraordinary event which is unpredictable or unavoidable and which substantially affects the provision of needed health care services or increases the need for health care services. These events include: an act of terrorism; a natural disaster; and, a widespread disease outbreak.
- Unexpected absences, discovered at or before the commencement of a scheduled shift, which could not be prudently planned for by an employer, and which could significantly affect patient safety.

Under these circumstances:

Assignment of additional hours must be utilized as a last resort, the health care facility or employer has to exhaust reasonable efforts to obtain other staffing; and, the health care facility or employer must provide the employee up to 1 hour to arrange for the care of the employee's minor child or elderly or disabled family member.

Vacancies that arise from chronic (long term) short staffing are not considered an unforeseeable emergent circumstance.

Reasonable Efforts Relating to Unforeseeable Emergent Circumstance

- Act 102 states that a health care facility engages in “reasonable efforts” mandating overtime under an unforeseeable emergent circumstance when it does the following:
 - Seeks persons who volunteer to work extra time from all available qualified staff who are working at the time of the unforeseeable emergent circumstance.
 - Contacts all qualified employees who have made themselves available to work extra time.
 - Seeks the use of *per diem* staff.
 - Seeks personnel from a contracted temporary agency when use of this staff is permitted by law or regulation.

Unexpected Absences



Last minute employee call-ins as “unexpected absences” under the exclusion for unforeseeable exigent circumstances:

An employer should utilize *reasonable efforts* to fill any vacancies. Issues could also concern whether the employer could have prudently planned for the unexpected absences, whether patient safety is impacted and the employer’s efforts and policies concerning unexpected absences, among other things.

On Call Time



Section 3(c)(1) of the Act permits the use of *on call time* so long as the health care facility or employer does not use this time as a substitute for mandatory overtime or as a means of circumventing the Act. Section 2 of the Act defines *on call time* as:

Time spent by an employee *who is not currently working on the premises of the place of employment* but who is compensated for availability; or

As a condition of employment, has agreed to be available to return to the premises of the place of employment on short notice if the need arises.

The Bureau will have to address the particular facts of each use of on call time. The Bureau may review the intent underlying the use of on call time and the facility's needs and past practices, among other things.

More Protections Allowed

Act 102 does not prevent an employer or health care facility from providing employees more protection from mandatory overtime than the minimum standards established under this law including those contained in collective bargaining agreements.

Health Care Facility's Preparation for Act 102's Effective Date on July 1, 2009:

- Become familiar with Act 102 and the employees that are covered.
- Fill vacancies or try to eliminate chronic staffing shortages.
- Meet with employees to enter agreed-upon, predetermined and regularly scheduled work shifts.
- Consider and implement *bona fide* on-call staffing and procedures if on call time is not used as a substitute for mandatory overtime and as a means of circumventing this law's intent.
- Review "reasonable efforts" to assure that these efforts are allowed by law or regulation and which provide staffing that is qualified to deal with patient needs.
- Consider voluntary, in-house grievance procedures.
- Update, enforce and implement:
 - Overtime policies: mandatory and voluntary.
 - Call off procedures.
 - Procedures for providing 10 hours of leave after overtime.
 - Arranging 1 hour for the care of employee's minor child or elderly or disabled family member.
- Document all of the policies regarding Act 102 and distribute to employees.
- Educate employees and supervisors.
- Provide input on regulations to Labor & Industry.

DOCUMENT, DOCUMENT AND DOCUMENT



A health care facility should have and utilize documented, reasonable and well-known policies.

A health care facility should extensively document the policies it uses pertaining to overtime, call off policies, on call time, emergencies, etc.

Employees should have written policies on overtime, call-off policies, unforeseeable emergent circumstance and Act 102 compliance.

A health care facility should extensively document when overtime occurs, the circumstances surrounding the use of overtime (e.g. Unforeseeable emergent circumstance or ongoing patient procedure) and whether the overtime was mandatory or voluntary.

L&I ENFORCEMENT



- Draft regulations.
- Educate and seek compliance.
- Coordinating with other Commonwealth agencies.
- Accept, investigate and prosecute, where warranted, complaints of alleged Act 102 violations.
- Represent Commonwealth in administrative hearings.
- Represent Commonwealth in court appeals.

General Complaint Process

1. Complaint filed with Bureau of Labor Law Compliance.
2. Referred to one of five regional offices for investigation.
3. Investigation conducted. Complainant and employer would likely be contacted.
4. Information and evidence reviewed.
5. Matter closed where facts warrant closure or if there is insufficient evidence of violation.
6. If prosecuted, Bureau would file formal charging document. Employer or health care facility may file an answer.
7. Employer or health care facility has right to formal administrative hearing before a neutral hearing examiner where evidence is presented, witnesses testify, cross-examination is permitted and briefs may be submitted.
8. Bureau has burden of presenting evidence proving alleged violation.
9. Formal written decision and order is issued.
10. Penalties include administrative fines of \$100 to \$1,000 per violation. The Department may also order a health care facility to take an action which it deems necessary to correct a violation.
11. Department decisions and orders may be appealed to Commonwealth Court.

BUREAU OF LABOR LAW COMPLIANCE

<p>Altoona District Office Suite 200, 2nd Floor 1130, 12th Avenue Altoona, PA 16601 Toll Free: 1-877-792-8198</p>	<p>Harrisburg District Office 1302-A Labor & Industry Bldg 651 Boas Street Harrisburg, PA 17121 Telephone: (717) 705-5969</p>	<p>Philadelphia District Office 110 North Eight St, Suite 203 Philadelphia PA 19107 Telephone: (215) 560-1858</p>
<p>Pittsburgh District Office 1201 State Office Building 300 Liberty Avenue Pittsburgh, PA 15222 Telephone: (412) 565-5300</p>	<p>Scranton District Office Scranton State Office Bldg 100 Lackawanna Ave -Rm 201B Scranton, PA 18503 Telephone: (570) 963-4577</p>	