

Mandatory Overtime Restrictions for Nurses Approaching; Massachusetts Nurses Association Issues Its Own Guidance to Nurses

As we [reported](#) in August, restrictions on the use of mandatory overtime for nurses in a hospital setting will go into effect on November 4, 2012. While many questions regarding these restrictions are likely to remain unanswered for some time even after the statute's effective date, hospitals should be preparing now for the impacts of the new law.

Hospitals at which nurses are represented by the Massachusetts Nurses Association should be aware that the MNA has recently posted its own views of the statute. The MNA posting can be found [here](#). The MNA's views, while providing insights into that organization's perspective on the new law, are entitled to no special legal weight, and hospitals of course are not obliged to follow them:

- The MNA posting makes no reference to the statute's safe harbor for collective bargaining agreements that set different standards for mandatory overtime (as discussed in our earlier advisory, we view this safe harbor provision as having the potential to substantially limit the statute's impact, depending on the specific language in each hospital's collective bargaining agreement)
- The MNA takes the view that holes in nursing schedules, high patient census, a sick call or leave of absence cannot justify the use of mandatory overtime
- The MNA contends that, until a different definition emerges from the newly created Health Policy Commission (a process likely to be completed only well after the statute's effective date), an "emergency situation" in which mandatory overtime could properly be required should be understood to apply only in the event of a county, state or nationally declared state of emergency (we believe the MNA's views on when mandatory overtime may be permissible are overly restrictive)
- The MNA does *not* appear to be counseling nurses (at least in this posting) to refuse to work if mandated to do so in circumstances which the nurse believes to be improper
- The MNA has created a form for nurses to report instances of mandatory overtime to the MNA, information which the MNA says it will then use to approach the legislature and state regulators
- The MNA has created a leaflet for nurses, advising them of the new law and of the MNA's views concerning it.

Each hospital will want to have in place, before November 4, a plan for dealing with the new law's requirements, and for responding to nurses and their labor representatives in the event scheduling practices are not complied with or are otherwise alleged to violate the limits on mandatory overtime. If you have questions in this regard, please feel free to contact any member of the Ropes & Gray [labor & employment](#) department.