

ALERTS AND UPDATES

New York Restricts Mandatory Overtime for Nurses

March 11, 2010

The New York Department of Labor has taken steps to enforce N.Y. Labor Law section 167—enacted in July 2009—which prohibits healthcare employers in New York state from relying on mandatory overtime to fill nursing vacancies. Since October 13, 2009, healthcare employers are required to implement a Nurse Coverage Plan to ensure adequate staffing without resorting to mandatory overtime.¹ Healthcare employers should develop a detailed Nurse Coverage Plan to avert having a complaint filed with the Department of Labor.

Unless there is a true emergency, registered and licensed practical nurses may decline to work beyond their regularly scheduled hours. This action would not constitute patient abandonment or neglect.² Nurses may volunteer to work overtime, but they may not be required to waive their rights with respect to mandatory overtime. Mandatory overtime may be used in the event of a healthcare disaster, a declared public emergency or where an employer determines an emergency need exists for mandatory overtime after making a good-faith effort to obtain alternative staffing. Employers are responsible for ensuring the adequacy of their staffing plans and cannot declare an emergency unless an event is unforeseen, could not have been prudently planned for and does not regularly occur. Unplanned absences of nurses scheduled for work can often be foreseen, and if they occur too regularly, these absences cannot be considered an emergency. However, a flu epidemic affecting a large number of an employer's nurses may be a legitimate basis for mandatory overtime.

What This Means for Employers

Employers who have not already done so should implement a Nurse Coverage Plan that includes alternatives to the use of mandatory overtime. Staffing alternatives may include per diem nurses, contracts with nurse agencies and employment agencies, arrangements for assignment of nursing floats, requests for an additional day of work from off-duty employees, and development and posting of a list of nurses seeking voluntary overtime. The Nurse Coverage Plan is to be distributed to nursing staff, posted conspicuously in a physical location accessible to nursing staff or posted on the employer's intranet site. Plans shall also be provided to union representatives and, upon request, to the New York Commissioner of Labor.

For Further Information

If you have any questions about this *Alert*, please contact any of the [attorneys](#) in our [Employment, Labor, Benefits and Immigration Practice Group](#), any of the [attorneys](#) in our [Health Law Practice Group](#) or the attorney in the firm with whom you are regularly in contact.

Notes

1. N.Y. Labor Law § 167, 12 N.Y.C.R.R. Part 177.
2. N.Y. Education Law § 6510-e.