

# WEST VIRGINIA DIVISION OF LABOR

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## THE WEST VIRGINIA NURSES OVERTIME AND PATIENT SAFETY ACT

This poster is required to be posted in a place accessible in accordance with Chapter 21, Article 5F, Section 3(h) of the Code of West Virginia.

### HOSPITAL NURSING OVERTIME LIMITATIONS AND REQUIREMENTS

Except as provided in subsections (b), (c), (d), (e) and (f) of this section, a hospital is prohibited from mandating a nurse, directly or through coercion, to accept an assignment of overtime and is prohibited from taking action against a nurse solely on the grounds that the nurse refuses to accept an assignment of overtime at the facility if the nurse declines to work additional hours because doing so may, in the nurse's judgment, jeopardize patient or employee safety.

In the interest of patient safety, any nurse who works twelve or more consecutive hours, as permitted by this section, shall be allowed at least eight consecutive hours of off-duty time immediately following the completion of the shift. No nurse shall work more than sixteen hours in a twenty-four-hour period. The nurse is responsible for informing the employer hospital of other employment experience during the twenty-four-hour period in question if this provision is to be invoked. To the extent that an on-call nurse has actually worked sixteen hours in a hospital, efforts shall be made by the hospital to find a replacement nurse to work.

**A covered hospital** is defined as a facility licensed under the provisions of article five-b, chapter sixteen of this code, but does not include hospitals operated by state or federal agencies.

**A nurse** is defined as a certified or licensed practical nurse or a registered nurse who is providing nursing services and is involved in direct patient care activities or clinical services but does not include certified nurse anesthetists. Nurse Managers are included with respect to their delivery of in-hospital patient care, but this is in no way intended to impact on their 24-hour management responsibility for a unit, area or service.

#### Exceptions:

- A nurse may be scheduled for duty or mandated to continue on duty in overtime status in an unforeseen emergent situation that jeopardizes patient safety.
- A nurse may be required to fulfill prescheduled on-call time, but nothing in this article shall be construed to permit an employer to use on-call time as a substitute for mandatory overtime.
- A nurse may be required to work overtime to complete a single patient care procedure already in progress, but nothing in this article shall be construed to permit an employer to use a staffing pattern as a means to require a nurse to complete a procedure as a substitute for mandatory overtime.
- These provisions do not apply when a collective bargaining agreement is in place between nurses and the hospital which is intended to substitute for the provisions of this article by incorporating a procedure for the hospital to require overtime.
- These provisions do not apply to voluntary overtime.

**Complaint Process** - Each hospital shall designate an anonymous process for patients and nurses to make staffing complaints related to patient safety. Any complaint to the Division of Labor regarding an alleged violation of the provisions of this article must be made within thirty days following the occurrence of the incident giving rise to the alleged violation. The commissioner shall keep each complaint anonymous until the commissioner finds that the complaint has merit.

#### Penalties:

1st offense – Reprimand

2nd offense\* – Reprimand and a fine not to exceed five hundred dollars.

3rd offense\* – Fine of not less than two thousand five hundred dollars and not more than five thousand dollars for each violation.

\*Second or third offenses only apply if the next occurrence is within 12 months of a prior offense.

*All moneys paid as administrative penalties shall be deposited into the Health Care Cost Review Fund provided by Section Eight, Article twenty-nine-b, Chapter Sixteen of the West Virginia Code.*