

260-RICR-30-05-4

TITLE 260 – DEPARTMENT OF LABOR AND TRAINING

CHAPTER 30 – WORKFORCE REGULATION AND SAFETY

SUBCHAPTER 05 – LABOR STANDARDS

PART 4 – Health Care Facilities Staffing

4.1 Authority

These rules and regulations are promulgated pursuant to R.I. Gen. Laws § 23-17.20-4.

4.2 Mandatory overtime; scope and general purpose.

The procedures set forth in this regulation apply to all public, private or state hospitals in accordance with R.I. Gen. Laws § 23-17.20-1 *et seq.* The rules set forth the standards and procedures governing the use by hospitals of required overtime by hourly nurses and certified nurse assistants involved in direct patient care activities or clinical services in health care facilities.

4.3 Applicability

A. The rules in this regulation do not apply to the following:

1. Resident Physicians;
2. Volunteers;
3. Employees who volunteer to work overtime;
4. Certified Nurse anesthetists
5. Salaried employees
6. Pre-scheduled surgical employees working “on-call time”

4.4 Definitions

A. As used in this Regulation, the following words and terms shall have the following meanings:

1. “Chronic short staffing” means a situation characterized by long standing vacancies in that portion of the facility's master staffing plan applicable to the work unit of an employee who files a complaint where such vacancies are the result of open positions that continually remain unfilled over a period of 180 days or more despite active recruitment efforts.
2. “Director” means the Director of the Department of Labor and Training.
3. “Department” means the Rhode Island Department of Labor and Training
4. “Employee” means an individual employed by a health care facility as a nurse licensed pursuant to R.I. Gen. Laws § 23-5-34 or a certified nurse assistant registered pursuant to R.I. Gen. Laws Chapter 23-17.9;
5. “Employer” means a person, partnership, association, corporation or person or group of persons acting directly or indirectly in the interest of a health care facility;
6. “Health care facility” means any private, public or state hospital;
7. “On-call time” means 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;
8. “Reasonable efforts” means that the employer shall:
 - a. Seek persons who volunteer to work extra time from all available qualified staff who are working at the time of the unforeseeable emergent circumstance;
 - b. Contact all qualified employees who have made themselves available to work extra time;
 - c. Seek the use of qualified per diem staff;
9. “Unforeseeable emergent circumstance” means an unpredictable or unavoidable occurrence relating to health care delivery that requires immediate action, and which shall include a major power outage, a public health emergency, an irregular increase in patient census, or an irregular increase in the number of employees not reporting for predetermined scheduled work shifts.

4.5 Records; dissemination of information.

- A. Except as provided for in § 4.5(B) of this Part below, an employer shall not require an employee to work in excess of an agreed to, predetermined and regularly scheduled daily work shift of eight (8), ten (10), or twelve (12) hours per week except in an unforeseeable emergent circumstance. In no case shall a health care facility require an employee to work in excess of twelve (12) consecutive hours. The acceptance by any employee of work in excess of this shall be strictly voluntary. The refusal of an employee to accept such overtime work shall not be grounds for discrimination, dismissal, discharge, or any other penalty or employment decision adverse to the employee.
- B. The requirements of § 4.5(A) above shall not apply in the case of an unforeseeable emergent circumstance when:
1. The overtime is required only as a last resort, and is not used to fill vacancies resulting from chronic short staffing; and
 2. The employer has exhausted reasonable efforts to obtain staffing. However, exhaustion of reasonable efforts shall not be required in the event of any declared national, State or municipal emergency or a disaster or other catastrophic event which substantially affects or increases the need for health care services or causes the facility to activate its emergency or disaster plan;
- C. On-call time shall not be construed to permit an employer to use mandatory on-call time as a substitute for mandatory overtime except for employees who are working pre-scheduled "on-call time" in the surgical department of employer.
- D. An employer shall maintain a system for keeping records of circumstances where employees are mandated to work in excess of an agreed to, predetermined and regularly scheduled daily work shift or in excess of forty (40) hours per week which shall include:
1. The employee's name and job title;
 2. The name of the employee's work area or unit;
 3. The date the overtime was worked, including start time;
 4. The number of hours of overtime mandated;
 5. The employee's daily work schedule for any week in which the employee is required to work excess time;

6. The reason why the overtime was necessary;
 7. A description of the reasonable efforts that were exhausted prior to requiring overtime. This shall include:
 - a. The names of employees contacted to work voluntary overtime;
 - b. A description of efforts to secure per diem staff; and
 - c. A list of the temporary agencies contacted; and
 - d. The signature of individual authorizing the required mandatory overtime.
- E. An employer shall provide the employee with a copy of the documentation in accordance with the requirements set forth in § 4.5(D) of this Part above within ten (10) days from the date of the required employee overtime work, except that the total number, rather than the names, of employees contacted in accordance with § 4.5(D)(7)(a) of this Part above shall be provided; Records as set forth in § 4.5(D) above shall be kept a period of 30 days or, if the employee files a complaint, until the complaint has been fully adjudicated and all appeals exhausted.
- F. A description of the reasonable efforts, if any, that were exhausted prior to requiring overtime. This shall include:
1. The names of employees contacted to work voluntary overtime;
 2. A description of efforts to secure per diem staff; and
 3. A list of the temporary agencies contacted; and
 4. The signature of individual authorizing the required mandatory overtime.

4.6 Enforcement and administrative penalties

If the Director determines that a health care facility has violated provisions of R.I. Gen. Laws § 23-17.20-1 *et. seq.*, the Director shall issue a penalty of three hundred dollars (\$300) for each violation pursuant to R.I. Gen. Laws § 23-17.20-4.

4.6.1 ENFORCEMENT

- A. An employee shall file a written complaint on a form designated for such purpose by the Department alleging violations of the Rhode Island Health Care Facilities Staffing Act, R.I. Gen. Laws § 23-17.20-1 *et seq.*;

- B. Upon receipt of an employee's complaint the Director or his or her designee shall give the employer written notice and thirty (30) days to respond in writing to said complaint. If the Director or his or her designee finds probable cause that the employer has failed to comply with the provisions of the Health Care Facilities Staffing Act, a hearing shall be scheduled wherein the Director or his or her designee shall determine by a preponderance of the evidence whether the employer committed the alleged violations in violation of the Act;

4.6.2 APPEAL OF AGENCY DECISION

Any party aggrieved by a final written order of the Department concerning a violation of the Health Care Facilities Staffing Act may file a complaint with the Superior Court pursuant to R.I. Gen. Laws § 42-35-15. The filing of a complaint does not automatically stay the decision or order unless so ordered by the Superior Court. In the absence of a timely appeal, the order or decision of the Department shall become final and no further administrative appeal may be taken.

4.7 Policies and procedures

A health care facility shall post, in one or more places in its establishment where it may be easily seen and read by all employees employed by the health care facility, a printed or typewritten poster produced and furnished by the Department.

4.8 Discharge or discrimination against an employee making a complaint

An employer shall not discharge or in any other manner discriminate against an employee because such employee has made any complaint to his or her employer, including the employer's representative or to the Department or any other governmental agency that the employee has been required to work overtime in contravention to the provisions of R.I. Gen. Laws § 23-17-1 *et seq.*

4.9 Complaint system

- A. An employee shall have a right to file a complaint up to thirty (30) days following the date of the assigned mandatory overtime if he or she believes the overtime was not in response to an unforeseen emergent circumstance, and/or required reasonable efforts were not exhausted;
- B. If requested, any employer record required herein shall be made available upon request to the Department within thirty (30) days.

- C. An employee may be represented by legal counselor union representative; however, the employee must sign the original compliant and must be available to provide information and/or provide testimony if needed.

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Type of Filing: Amendment

Effective Date: 07/30/2018

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