



Mandatory Overtime: What Nurses Need to Know

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After “Mandatory Overtime Prohibited” appeared in the October/November/December 2009 issue of *TEXAS NURSING Voice*, the Texas Nurses Association (TNA) received a number of phone calls and e-mails from nurses around Texas with questions about their particular situations. This follow-up article intends to clarify requirements of the new law in an attempt to share many of the questions we received from nurses.

The Texas Department of State Health Services (DSHS) will be revising the Hospital Licensing Rules for consistency with SB 476, and further clarification of the Hospital Safe Staffing Law which includes mandatory overtime prohibition. These rules are not expected to be adopted until late summer or early fall of 2010.

1. What do nurses need to know about the new mandatory overtime law?

- It applies to hospitals.
- It prohibits hospitals from requiring nurses to work hours or days in addition to hours or days scheduled.
- It is not related to the total number of hours or days scheduled.
- It is not related to how time is paid (e.g. overtime pay).
- There are exceptions in certain emergency or disaster situations.
- It is illegal for a hospital to retaliate against a nurse who refuses to work prohibited mandatory overtime.
- Refusing to work prohibited mandatory overtime is not patient abandonment.

2. What is mandatory overtime?

- ‘Mandatory overtime’ means a requirement that a nurse work hours or days that are in addition to the hours or days scheduled, regardless of the length of a scheduled shift or the number of scheduled shifts each week.”
- Mandatory overtime does not include:
 - Prescheduled on-call time
 - Time immediately before or after a scheduled shift necessary to document or communicate patient status to ensure patient safety (e.g., end-of-shift report)
- While many of us may have our own understanding of “mandatory overtime,” the definition provided in the statute is the one used to determine whether a particular practice is prohibited by law. Being required to work more than 40 hours per week is not necessarily prohibited mandatory overtime if the shift had been prescheduled. Yet, being required to come in for an unscheduled shift might be prohibited mandatory overtime, even if total hours worked are under 40 for that week.

3. When is mandatory overtime not prohibited? Or what are the exceptions?

- The prohibitions on mandatory overtime do not apply if:
 - i. A health care disaster, such as a natural or other type of disaster that increases the need for health care personnel unexpectedly affects the county in which the nurse is employed or affects a contiguous county; or
 - ii. A federal, state, or county declaration of emergency is in effect in the county in which the nurse is employed or is in effect in a contiguous county; or
 - iii. There is an emergency or unforeseen event of a kind that:
 - a. Does not regularly occur
 - b. Increases the need for health care personnel at the hospital to provide safe patient care; and
 - c. Could not prudently be anticipated by the hospital.

If a hospital determines that an exception exists under an unforeseen emergency (iii), the hospital can mandate a nurse to work overtime only after making a good faith effort to meet the staffing need through voluntary overtime, including calling per diems and agency nurses, assigning floats, or requesting an additional day of work from off-duty employees.

- The prohibitions on mandatory overtime also do not apply if the nurse is actively engaged in an ongoing medical or surgical procedure and the continued presence of the nurse through completion of the procedure is necessary to ensure the health and safety of the patient.

4. How does on-call time fit in?

Prescheduled on-call time is not considered mandatory overtime. However, a hospital may not use on-call time as a substitute for mandatory overtime. Exactly what hospital practices would constitute using on-call as a substitute for mandatory overtime is not clear. While hospitals traditionally schedule on-call to meet unanticipated staffing needs, it is possible that hospitals could attempt to avoid mandatory overtime by placing nurses on call every day. The Department of State Health Services hospital licensing rules may provide further clarification about what on-call practices would be considered a substitute for mandatory overtime.

5. What if I believe my hospital is using prohibited mandatory overtime?

You have several options to raise your concerns within your organization and have them addressed. It is illegal for a hospital to retaliate against you for raising patient safety concerns.

- **Speak directly to your manager about the practice you identify as mandatory overtime.** Share your perception that it constitutes mandatory overtime and is not allowed by the Hospital Safe

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Staffing Law. Attempt to understand your manager's rationale for the work requirements and see if together you are able to identify mutually acceptable alternatives.

- **Share your concern with your staffing committee representative.** Overtime, and mandatory overtime in particular, is often the result of scheduling and staffing problems – areas the staffing committee is responsible for monitoring and addressing. By bringing your concern to this group, it raises it out of your department into a larger arena where many minds can evaluate the situation and work on a solution.
- **If you believe the mandatory overtime request places you at risk due to fatigue, request Safe Harbor.** A request for Safe Harbor Nursing Peer Review brings the situation up for review by your peers who can provide an objective perspective

on the practices in your department. The Safe Harbor Nursing Peer Review Committee must report their findings to the chief nursing officer who must act on their findings.

- **Consider sharing your concerns with your Human Resources Director or Hospital Compliance Officer.** These individuals are vested in ensuring the hospital is following workplace regulations and often have confidential procedures in place for employees to register concerns or complaints.
- **If you have been unsuccessful in raising concerns within your organization, you may report outside the organization to the Department of State Health Services who are is responsible for licensing hospitals.** You may file a complaint online at www.dshs.state.tx.us/HFP/complain.shtm.

Questions and comments are welcomed at practice@texasnurses.org. ★

Tired is Trouble: A Nurse Leader's Guide to Managing Fatigue in the Workplace

The Practice Committee of the Texas Nurses Association (TNA) has worked to increase nurses' understanding of the effect of human factors, such as fatigue, on their fitness for duty. Because of nurse leaders' unique role in establishing safe practice environments that promote patient safety, the committee considered how they could support this role. A survey of Texas chief nursing officers (CNOs) conducted by the Committee revealed that, while most CNOs were aware that fatigue negatively affected nurse performance and safety, only 4% had developed any kind of approach to address fatigue as a safety risk.

To assist more nurse leaders (managers, directors, risk managers, etc.) meet their obligation to maintain safe environments, the Committee developed a resource guide, *Tired is Trouble: A Nurse Leader's Guide to Managing Fatigue in the Workplace*. This resource guides nurse leaders through a comprehensive organizational assessment to identify practices that may contribute to fatigue in the workplace. Specific tools to prevent, manage, and mitigate fatigue are provided. This publication is available from TNA at www.texasnurses.org.

Surveyed CNOs also said that they needed resources for staff education on human performance factors such as fatigue. This edition of the *Texas Nursing Voice* contains an article on just that topic: *Fitness for Duty Includes Getting Your ZZZZs*. If CNE credit is desired, the article and post-test may be accessed online www.texasnurses.org.

Members of TNA's Practice Committee wanted to make themselves available to the readership regarding the issue of fatigue in the workplace and the importance of addressing it from both an organizational and individual perspective. Contact information is listed below.

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