



Mandatory Overtime Prohibited

by Cindy Zolnierak, MSN, RN, Director of Practice,
Texas Nurses Association

The Hospital Safe Staffing Law – Senate Bill 476 passed by the 2009 Texas Legislature – became effective on September 1. It prohibits mandatory overtime for nurses working in hospitals – both RNs and LVNs. Now, it is illegal for a hospital to suspend, terminate or discriminate against a nurse who refuses to work overtime, excluding certain natural disasters and medical emergencies.

Mandatory overtime is concerning because it could require a fatigued nurse to provide patient care thereby increasing the nurse’s risk of making an error. It also interferes with a nurse’s work-life balance – and obligations away from the work setting – and general satisfaction.

How Mandatory OT is Determined

Mandatory overtime is defined by the hours scheduled rather than total hours worked, e.g., time over 40 hours per week. If 48 hours are scheduled, they aren’t considered mandatory overtime even

though some of the time may be paid at an overtime rate.

However, if a nurse is scheduled for two eight-hour shifts in one week, and is later required to pick up an additional unscheduled shift, that additional shift

Mandatory overtime is defined as: *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.*

would be considered mandatory overtime even though it would not be paid at an overtime rate since total hours worked are under 40 hours.

On-Call Time

The new Texas law further states:

In determining whether work is mandatory overtime, prescheduled on-call time or time immediately before or after a scheduled shift necessary to document or communicate patient status to ensure patient safety is not included [as mandatory overtime] ...A hospital may not use on-call time as a substitute for mandatory overtime.

For instance, if a nurse is scheduled to be on-call and is called in to work, that is not considered mandatory overtime. However, if the nurse is scheduled to be on call immediately following his/her shift, and then is routinely required to stay over, an abuse of on-call as a substitute for mandatory overtime may be occurring. Time for receiving or providing report or for documenting care immediately before or after a shift is not considered mandatory overtime.

Exceptions in the Law

There are exceptions when a hospital may use mandatory overtime after making a good faith effort to meet staffing needs through voluntary overtime and other strategies (agency nurses, etc.). These exceptions include:



1. A health care disaster ...that increases the need for health care personnel, unexpectedly affects the county in which the nurse is employed or affects a contiguous county;
2. 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;
3. There is an emergency or unforeseen event of a kind that:
 - does not regularly occur;
 - increases the need for health care personnel at the hospital to provide safe patient care; and
 - could not prudently be anticipated by the hospital; or

Mandatory Overtime continued on page 8

October, November, December 2009

Mandatory Overtime continued from page 7

- The nurse is actively engaged in an ongoing medical or surgical procedure and the continued presence of the nurse through the completion of the procedure is necessary to ensure the health and safety of the patient.*

Retaliation is Prohibited

Retaliation against a nurse who refuses to work mandatory overtime is prohibited:

A hospital may not suspend, terminate, or otherwise discipline or discriminate against a nurse who refuses to work mandatory overtime.

General Concerns and Questions

Texas Nurses Association has recently received questions from nurses regarding how the law prohibiting mandatory overtime applies to their work situation. The following scenarios may assist nurses in determining how the law affects them.

Scenario 1 – Full-time nurses in the ICU are typically scheduled for three 12-hour shifts per week. Due to position vacancies, all full-time ICU nurses are told they must schedule themselves an additional shift each two-week period (e.g., a total of 7 shifts every two weeks).

Question: Is this mandatory overtime?

Answer: Although some of the hours may be paid at an overtime rate, because the additional shift is scheduled, it is not considered mandatory overtime.

Scenario 2 – Nurses on the med-surg unit are told they must schedule themselves at least one day a week for one four-hour on-call period immediately following their scheduled

eight-hour shift. The on-call nurse is routinely required to stay several hours beyond his/her eight-hour shift to cover staffing needs.

Question: Is this mandatory overtime?

Answer: Because the on-call nurse is regularly required to stay over, this would be considered misusing on-call as a substitute for mandatory overtime.

Scenario 3 – Nurses in interventional radiology (IR) are scheduled to work from 0700 to 1600 hours. Non-emergent cases are added on the IR schedule after 1600 hours and the nurses are told they must stay until all the cases are finished.

Question: Is this mandatory overtime?

Answer: Yes, this would be an example of mandatory overtime because the nurses were only scheduled to work until 1600 hours. If they were in the middle of a case at 1600 hours, they would need to stay until that particular case was completed (see exception 4). However, being required to work beyond the completion of an ongoing case would be considered mandatory overtime.

Texas Nurses Association expects the Department of State Health Services to revise the Hospital Licensing Rules for consistency with SB 476 and additional guidance for hospital compliance with the law is expected. Your questions provide direction for rule development so we are interested in hearing your questions and concerns so that we can attempt to ensure they are addressed in the rule making process.

Please send any questions/comments to practice@texasnurses.org. ★