

CHAPTER 300

AN ACT concerning work hours for certain health care facility employees and supplementing P.L.1966, c.113 (C.34:11-56a et seq.).

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

C.34:11-56a31 Establishment of maximum work week for certain health care facility employees.

1. It is declared to be the public policy of this State to establish a maximum work week for certain hourly wage health care facility employees, beyond which the employees cannot be required to perform overtime work, in order to safeguard their health, efficiency, and general well-being as well as the health and general well-being of the persons to whom these employees provide services.

C.34:11-56a32 Definitions relative to work hours for certain health care facility employees.

2. As used in this act:

"Employee" means an individual employed by a health care facility who is involved in direct patient care activities or clinical services and who receives an hourly wage, but shall not include a physician.

"Employer" means an individual, partnership, association, corporation or person or group of persons acting directly or indirectly in the interest of a health care facility.

"Health care facility" means a health care facility licensed by the Department of Health and Senior Services pursuant to P.L.1971, c.136 (C.26:2H-1 et seq.), a State or county psychiatric hospital, a State developmental center, or a health care service firm registered by the Division of Consumer Affairs in the Department of Law and Public Safety pursuant to P.L.1960, c.39 (C.56:8-1 et seq.).

"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.

"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 per diem staff; and d. seek personnel from a contracted temporary agency when such staff is permitted by law or regulation.

"Unforeseeable emergent circumstance" means an unpredictable or unavoidable occurrence at unscheduled intervals relating to health care delivery that requires immediate action.

C.34:11-56a33 Excessive work shift contrary to public policy.

3. The requirement that an employee of a health care facility accept work in excess of an agreed to, predetermined and regularly scheduled daily work shift, not to exceed 40 hours per week, except in the case of an unforeseeable emergent circumstance when the overtime is required only as a last resort and is not used to fill vacancies resulting from chronic short staffing and the employer has exhausted reasonable efforts to obtain staffing, is declared to be contrary to public policy and any such requirement contained in any contract, agreement or understanding executed or renewed after the effective date of this act shall be void.

C.34:11-56a34 Health care facility employee work shift determined; exceptions voluntary.

4. a. Notwithstanding any provision of law to the contrary, no health care facility shall require an employee to accept work in excess of an agreed to, predetermined and regularly scheduled daily work shift, not to exceed 40 hours per week.

b. The acceptance by any employee of such work in excess of an agreed to, predetermined and regularly scheduled daily work shift, not to exceed 40 hours per week, shall be strictly voluntary and the refusal of any 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.

c. The provisions of this section 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. In the event of such an unforeseeable emergent circumstance, the employer shall provide the employee with necessary time, up to a maximum of one hour, to arrange for the care of the employee's minor children or elderly or disabled family members.

The requirement that the employer shall exhaust reasonable efforts to obtain staffing shall not apply 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.

d. In the event that an employer requires an employee to work overtime pursuant to subsection c. of this section, the employer shall document in writing the reasonable efforts it has exhausted. The documentation shall be made available for review by the Department of Health and Senior Services and the Department of Labor.

C.34:11-56a35 Violations, sanctions.

5. An employer who violates the provisions of this act shall be subject to the sanctions provided by law for violations of the "New Jersey State Wage and Hour Law," P.L.1966, c.113 (C.34:11-56a et seq.).

C.34:11-56a36 Construction, applicability of act.

6. a. The provisions of this act shall not be construed to impair or negate any employer-employee collective bargaining agreement or any other employer-employee contract in effect on the effective date of this act.

b. The provisions of this act shall not apply to employees of assisted living facilities licensed by the Department of Health and Senior Services who are provided with room and board as a benefit of their employment and reside in the facility on a full-time basis.

c. The provisions of this act shall not apply to on-call time, but nothing in this act shall be construed to permit an employer to use on-call time as a substitute for mandatory overtime.

C.34:11-56a37 Collection of data relative to mandatory overtime prohibition, report.

7. The Departments of Health and Senior Services, Human Services, and Law and Public Safety shall each collect data from all health care facilities which the respective department licenses, operates or regulates, as to the potential impact of the mandatory overtime prohibition on employee availability and other considerations, and shall jointly report their findings to the Senate and General Assembly Health Committees within 18 months of the date of enactment of this act.

C.34:11-56a38 Rules, regulations.

8. The Commissioner of Health and Senior Services, in consultation with the Attorney General and the Commissioners of Human Services and Labor, shall adopt rules and regulations, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), within six months of the date of enactment of this act, to carry out the purposes of this act.

9. This act shall take effect 12 months after the date of enactment in the case of an acute care hospital and 18 months after the date of enactment in the case of long-term care facilities and all other health care facilities

Approved January 2, 2002.