**Section 250.1110 Mandatory Overtime Prohibition**

a) As used in this Section, the following definitions apply:

"Agreed-to, predetermined shift" – nursing hours of work, provided in advance to staff, in a prospective nurse staffing schedule for each patient care unit. Any work hours in addition to the predetermined shifts or prospective work schedule must be agreed to between the nurse employee and the employer. The agreed-to, predetermined shift may include "on call" but does not include other overtime staffing mechanisms in which a nurse employee's work, or availability to work additional hours, is at the sole discretion of the employer.

*"Mandated overtime" – work that is required by the hospital in excess of an agreed-to, predetermined work shift. Time spent by nurses required to be available as a condition of employment in specialized units, such as surgical nursing services, shall not be counted or considered in calculating the amount of time worked for the purpose of applying the prohibition against mandated overtime*. (Section 10.9(a) of the Act)

*"Nurse" – any advanced practice registered nurse, registered professional nurse, or licensed practical nurse, as defined in the Nursing and Advanced Practice Nursing Act, who receives an hourly wage and has direct responsibility to oversee or carry out nursing care. For the purposes of this Section, "advanced practice registered nurse" does not include a certified registered nurse anesthetist who is primarily engaged in performing the duties of a nurse anesthetist*. (Section 10.9(a) of the Act)

"On-call/available" – the voluntary agreement by any nurse to be assigned specific agreed-to, predetermined hours of availability for work as a condition of employment. Additional hours of on-call in excess of the nurse's predetermined hours of work shall be strictly voluntary.

"Overtime" – the hours of work in excess of an agreed-to predetermined regularly scheduled shift, not to exceed 40 hours of work in a seven-day workweek.

"Retaliation" – disciplining, discharging, suspending, demoting, harassing, denying employment or promotion, laying off, or taking any adverse action against a nurse.

"Specialized unit" – a unit, such as surgical nursing services.

"Substantially affect" – affecting a situation, except for deviations that result in unimportant changes, given the particular situation involved.

*"Unforeseen emergent circumstances" –*

*Any declared national, State or municipal disaster or other catastrophic event, or implementation of a hospital's disaster plan, that will substantially affect or increase the need for health care services; or*

*Any circumstances in which patient care needs require specialized nursing skills through the completion of a procedure.*

*An "unforeseen emergent circumstance" does not include situations in which the hospital fails to have enough nursing staff to meet the usual and reasonably predictable nursing needs of its patient*. (Section 10.9(a) of the Act)

b) *Mandated overtime* is *prohibited. No nurse* shall *be required to work mandated overtime except in the case of an unforeseen emergent circumstance when such overtime is required only as a last resort.*

1) *Such mandated overtime shall not exceed 4 hours beyond an agreed-to, predetermined work shift.* (Section 10.9(b) of the Act)

2) *Time spent by nurses required to be available as a condition of employment in specialized units, such as surgical nursing services, shall not be counted or considered in calculating the amount of time worked for the purpose of applying the prohibition against mandating overtime.* (Section 10.9(a) of the Act)

3) For any nurse who does not agree to employment requiring on-call hours, the refusal of a nurse employee to agree to such on-call availability shall not constitute grounds for retaliation, discrimination, dismissal, discharge, or any other penalty, threat of reports for discipline, or employment decisions adverse to the nurse employee.

4) The hospital's written staffing plan shall include an on-call policy for those units where on-call is required as a condition of employment.

5) On-call is not to be used to fill vacancies resulting from chronic or foreseeable staff shortages.

c) *When a nurse is mandated to work up to 12 consecutive hours, the nurse* shall *be allowed at least 8 consecutive hours of off-duty time immediately following the completion of a shift*. (Section 10.9(c) of the Act)

d) *No hospital* shall *discipline, discharge, or take any other adverse employment action against a nurse solely because the nurse refused to work mandated overtime as prohibited under subsection* (b). (Section 10.9(d) of the Act)

e) *Violations*

1) *Any employee of a hospital that is subject to the Act and this Part may file a complaint with the Department of Public Health regarding an alleged violation of* the Act. (Section 10.9(e) of the Act)

A) A complaint shall be submitted to the Department in writing, by telephone, or by personal visit.

B) An oral complaint will be reduced to writing by the Department.

2) *The complaint* shall *be filed within 45 days following the occurrence of the incident giving rise to the alleged violation. The Department* will *forward notification of the alleged violation to the hospital in question within 3 business days after the complaint is filed.* (Section 10.9(e) of the Act)

3) *Upon receiving a complaint of a violation of this Section, the Department may take any action authorized under Section 7 or 9 of* the Act. (Section 10.9(e) of the Act)

f) *Any violation of this Section* shall *be proved by clear and convincing evidence that a nurse was required to work overtime against his or her will. The hospital may defeat the claim of a violation by presenting clear and convincing evidence that an unforeseen emergent circumstance, which required overtime work, existed at the time the employee was required or compelled to work.* (Section 10.9(f) of the Act) Hearings shall be conducted in accordance with Section 250.140.

(Source: Amended at 43 Ill. Reg. 3889, effective March 18, 2019)