



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

SB1916

Introduced 2/10/2011, by Sen. Donne E. Trotter

SYNOPSIS AS INTRODUCED:

820 ILCS 105/4a

from Ch. 48, par. 1004a

Amends the Minimum Wage Law. Provides that no certified nursing assistant shall be required to work mandated overtime except in cases of an unforeseen emergent circumstance when such overtime is required only as a last resort, and only 4 additional hours in such cases. Provides that when a certified nursing assistant is mandated to work up to 12 consecutive hours, the certified nursing assistant must be allowed at least 8 consecutive hours of off-duty time immediately following the completion of such a shift. Provides that no employer shall discipline, discharge, or take any other adverse action against a certified nursing assistant solely because the certified nursing assistant refused to work mandated overtime as prohibited.

LRB097 09927 AEK 50091 b

1 AN ACT concerning employment.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Minimum Wage Law is amended by changing
5 Section 4a as follows:

6 (820 ILCS 105/4a) (from Ch. 48, par. 1004a)

7 Sec. 4a. (1) Except as otherwise provided in this Section,
8 no employer shall employ any of his employees for a workweek of
9 more than 40 hours unless such employee receives compensation
10 for his employment in excess of the hours above specified at a
11 rate not less than 1 1/2 times the regular rate at which he is
12 employed.

13 (2) The provisions of subsection (1) of this Section are
14 not applicable to:

15 A. Any salesman or mechanic primarily engaged in
16 selling or servicing automobiles, trucks or farm
17 implements, if he is employed by a nonmanufacturing
18 establishment primarily engaged in the business of selling
19 such vehicles or implements to ultimate purchasers.

20 B. Any salesman primarily engaged in selling trailers,
21 boats, or aircraft, if he is employed by a nonmanufacturing
22 establishment primarily engaged in the business of selling
23 trailers, boats, or aircraft to ultimate purchasers.

1 C. Any employer of agricultural labor, with respect to
2 such agricultural employment.

3 D. Any employee of a governmental body excluded from
4 the definition of "employee" under paragraph (e)(2)(C) of
5 Section 3 of the Federal Fair Labor Standards Act of 1938.

6 E. Any employee employed in a bona fide executive,
7 administrative or professional capacity, including any
8 radio or television announcer, news editor, or chief
9 engineer, as defined by or covered by the Federal Fair
10 Labor Standards Act of 1938 and the rules adopted under
11 that Act, as both exist on March 30, 2003, but compensated
12 at the amount of salary specified in subsections (a) and
13 (b) of Section 541.600 of Title 29 of the Code of Federal
14 Regulations as proposed in the Federal Register on March
15 31, 2003 or a greater amount of salary as may be adopted by
16 the United States Department of Labor. For bona fide
17 executive, administrative, and professional employees of
18 not-for-profit corporations, the Director may, by
19 regulation, adopt a weekly wage rate standard lower than
20 that provided for executive, administrative, and
21 professional employees covered under the Fair Labor
22 Standards Act of 1938, as now or hereafter amended.

23 F. Any commissioned employee as described in paragraph
24 (i) of Section 7 of the Federal Fair Labor Standards Act of
25 1938 and rules and regulations promulgated thereunder, as
26 now or hereafter amended.

1 G. Any employment of an employee in the stead of
2 another employee of the same employer pursuant to a
3 worktime exchange agreement between employees.

4 H. Any employee of a not-for-profit educational or
5 residential child care institution who (a) on a daily basis
6 is directly involved in educating or caring for children
7 who (1) are orphans, foster children, abused, neglected or
8 abandoned children, or are otherwise homeless children and
9 (2) reside in residential facilities of the institution and
10 (b) is compensated at an annual rate of not less than
11 \$13,000 or, if the employee resides in such facilities and
12 receives without cost board and lodging from such
13 institution, not less than \$10,000.

14 I. Any employee employed as a crew member of any
15 uninspected towing vessel, as defined by Section 2101(40)
16 of Title 46 of the United States Code, operating in any
17 navigable waters in or along the boundaries of the State of
18 Illinois.

19 (3) Any employer may employ any employee for a period or
20 periods of not more than 10 hours in the aggregate in any
21 workweek in excess of the maximum hours specified in subsection
22 (1) of this Section without paying the compensation for
23 overtime employment prescribed in subsection (1) if during that
24 period or periods the employee is receiving remedial education
25 that:

26 (a) is provided to employees who lack a high school

1 diploma or educational attainment at the eighth grade
2 level;

3 (b) is designed to provide reading and other basic
4 skills at an eighth grade level or below; and

5 (c) does not include job specific training.

6 (4) A governmental body is not in violation of subsection
7 (1) if the governmental body provides compensatory time
8 pursuant to paragraph (o) of Section 7 of the Federal Fair
9 Labor Standards Act of 1938, as now or hereafter amended, or is
10 engaged in fire protection or law enforcement activities and
11 meets the requirements of paragraph (k) of Section 7 or
12 paragraph (b)(20) of Section 13 of the Federal Fair Labor
13 Standards Act of 1938, as now or hereafter amended.

14 (5) Mandated overtime prohibited for certified nursing
15 assistants.

16 (a) No certified nursing assistant shall be required to
17 work mandated overtime except in cases of an unforeseen
18 emergent circumstance when such overtime is required only
19 as a last resort. Mandated overtime in the case of an
20 unforeseen emergent circumstance shall not exceed 4 hours
21 beyond a predetermined work shift agreed to by the employer
22 and the certified nursing assistant.

23 (b) When a certified nursing assistant is mandated to
24 work up to 12 consecutive hours, the certified nursing
25 assistant must be allowed at least 8 consecutive hours of
26 off-duty time immediately following the completion of such

1 a shift.

2 (c) No employer shall discipline, discharge, or take
3 any other adverse action against a certified nursing
4 assistant solely because the certified nursing assistant
5 refused to work mandated overtime as prohibited under this
6 subsection (5).

7 (d) As used in this subsection (5):

8 "Certified nurse assistant" means an individual
9 certified as defined in Section 3-206 of the Nursing
10 Home Care Act or Section 3-206 of the MR/DD Community
11 Care Act.

12 "Mandated overtime" means work that is required by
13 the employer in excess of an agreed-to, predetermined
14 work shift. Time spent by certified nursing assistants
15 required to be available as a condition of specialized
16 units, such as surgical nursing services, shall not be
17 counted or considered in calculating the amount of time
18 worked for the purpose of applying the prohibition
19 against mandated overtime under this subsection (5).

20 "Unforeseen emergent circumstance" means any
21 declared national, State, or municipal disaster, other
22 catastrophic event, or any implementation of a
23 hospital or nursing home's disaster plan, that will
24 substantially affect or increase the need for health
25 care services. An "unforeseen emergent circumstance"
26 does not include situations in which the employer fails

1 to have enough staff to meet the usual and reasonably
2 predictable needs of its patients or residents.

3 (Source: P.A. 92-623, eff. 7-11-02; 93-672, eff. 4-2-04.)