

LABOR LAW §167 – RESTRICTIONS ON CONSECUTIVE HOURS OF WORK FOR NURSES

No HEALTH CARE EMPLOYER shall require a NURSE to work more than that Nurse's regularly scheduled work hours.

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Mandatory overtime is prohibited, however a Nurse *may* be required to work overtime in four limited circumstances:

(1) a **Health Care Disaster** that unexpectedly increases the need for health care personnel,

OR

(2) a Federal, State, or County **Declaration of Emergency** in the county in which the Nurse is employed or in a contiguous county,

OR

(3) an **ongoing medical or surgical procedure** in which Nurse is actively engaged and whose presence is needed to ensure the health and safety of the patient,

OR

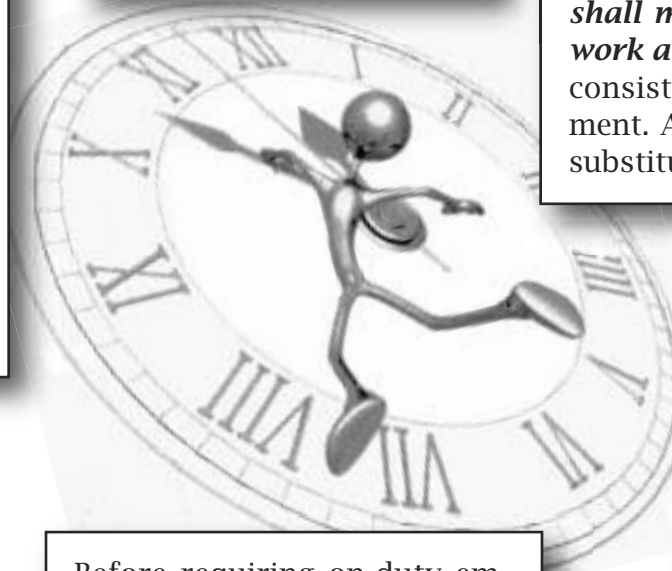
(4) a **Health Care Employer** determines there is an emergency, necessary to provide safe patient care.

Emergency, including an unanticipated staffing emergency, is an unforeseen event that could not be prudently planned for by employer and does not regularly occur.

Health Care Employer:

- 1) Both public and private employers who provide health care services in a facility licensed or operated under Article 28 of the *Public Health Law*;
- 2) Public employers that provide health care services operated or licensed under *Mental Hygiene Law*, the *Education Law* or the *Correction Law*.

Nurse includes RNs and LPNs who provide direct patient care.



"Regularly scheduled work hours," including pre-scheduled on-call time and time spent for the purpose of communicating shift reports regarding patient status necessary to ensure patient safety, **shall mean those hours a Nurse has agreed to work and is normally scheduled to work.** Must be consistent with the collective bargaining agreement. An employer may not use on-call time as a substitute for mandatory overtime.

Does **not** restrict a Nurse's ability to work voluntary overtime.

Section 167 is a remedial measure intended to protect the public health and the quality of patient care and does not waive or diminish the rights of any Nurse pursuant to any other law, regulation, or collective bargaining agreement.

Before requiring on-duty employee to remain, the Health Care Employer must make a good faith effort that overtime is voluntary, including, but not limited to, and to the extent such options exist:

- calling per diems,
- agency nurses,
- assigning floats,
- requesting an additional day of work from off-duty employees.

Nurses' refusal of overtime work

Education Law §6510-e has been amended to provide that a Nurse's refusal to work beyond the Nurse's regularly scheduled hours shall not solely constitute patient abandonment or neglect except under the four exceptions to mandatory overtime listed in Section 167.