

What's New in the Patient Safety World

September 2023

Mandatory Overtime Restricted for NY Nurses

Fatigue in healthcare workers is a significant patient safety issue. Virtually every category of healthcare worker can be affected by fatigue, but probably the most has been written about fatigue in nurses. Regular readers of our columns know we are not fans of the 12-hour nursing shift because of the potential for fatigue. But even worse than the voluntary 12-hour shift is so-called **"mandatory" overtime**. That's when a nurse who has completed an 8-hour (or longer) shift is "asked" or "mandated" to work another shift. At least those nurses working a voluntary 12-hour shift have planned for the longer duration and may have taken steps to help avoid fatigue. But those with mandatory overtime likely have not prepared for the extra hours and may be more prone to fatigue.

New York State's revised law restricting mandatory overtime for nurses went into effect on July 6, 2023 ([Kakacek 2023](#), [NYSDOL 2023](#)). Exceptions include emergencies, disasters, and situations such as a surgical case extending for a long period. Actually, mandatory overtime has been restricted in NY since 2009 but the new action was an amendment that creates a reporting procedure for health care employers who utilize the exceptions to the limitations on mandatory overtime and establishing monetary penalties for violations. The amended law also expands the definition of "health care employer" to include facilities operated or licensed by the Office of Child and Family Services.

In addition, a poster is now required to be posted at each healthcare employer's facility for employees to view. The poster needs to explain how nurses can file complaints against the employer if they feel that the employer is in violation of the new law.

If employers do not comply with this new law, they will be subject to fines. For the first violation fines are not to exceed one thousand dollars; for the second violation within twelve months, fines will be up to two thousand dollars; and third offense and subsequent, up to three thousand dollars. The amended law establishes an Enforcement Officer within NYSDOL to investigate claims of violations.

The [law](#) allows as an exception a federal, state, or county declaration of emergency. It also allows for an exception an "emergency", including an unanticipated staffing emergency, which is defined as an unforeseen event that could not be prudently planned for by an employer and does not regularly occur".

We've always been a little bothered by that definition. We suspect that most instances of mandatory overtime are triggered by something like a nurse calling in unexpectedly with an illness or other unexpected event that prevents them from working their scheduled shift. The answer probably lies within a FAQ on the DOL website:

Q: What steps must health care employers take to avoid using mandatory overtime?

A: A health care employer must prudently plan for patient care emergencies and meet routine staffing needs without using mandatory overtime by implementing a Nurse Coverage Plan. This plan should take into account typical patterns of staff absenteeism due to:

- Illness
- Leave
- Bereavement
- Other similar factors

It must reflect the health care employer's typical levels and types of patients served by the health care facility. The Plan must identify and describe alternative staffing methods available to the health care employer to ensure adequate staffing without mandatory overtime. This includes (but is not limited to):

- Contracts with per diem nurses
- Contracts with nurse registries/employment agencies for nursing services
- Arrangements for assignment of nursing floats
- Requesting an additional day of work from off-duty employees
- Development and posting of a list of nurses seeking voluntary overtime

The health care employer must document all attempts to avoid the use of mandatory overtime and seek alternative staffing.

The NYSDOL [website](#), in addition to describing the law and having a good FAQ section, allows nurses to file a complaint via an interactive .pdf form.

We suspect that the new amendments to the law were needed because frequent instances of mandatory overtime had continued despite the 2009 law.

The nation-wide shortage of nurses is challenging to everyone and, undoubtedly, has been a major reason hospitals have continued to mandate overtime. But mandated overtime can only add to the many reasons for nursing burnout, which may further exacerbate that nursing shortage.

From a patient safety perspective there is a dilemma we always face – fatigue vs. unfamiliarity. Regarding housestaff, our question has always been “Would you rather be cared for by a tired resident who knows you or a covering resident who does not know you?” The same might apply to nurses: “Would you rather be cared for by a tired nurse who knows you, or a per diem nurse or float nurse who does not know you?”. There is no hard and fast answer to those questions. Moreover, there is ample evidence that long nursing shifts lead to greater personal harm to nurses (eg. needle sticks, car accidents, etc.). With housestaff, we've come to the conclusion that the fatigue factor is likely

harmful and we've enforced housestaff work hour restrictions. It's time we enforce the restrictions on mandatory overtime for nurses as well.

Our previous columns on the 12-hour nursing shift:

November 9, 2010	“12-Hour Nursing Shifts and Patient Safety”
February 2011	“Update on 12-hour Nursing Shifts”
November 13, 2012	“The 12-Hour Nursing Shift: More Downsides”
July 29, 2014	“The 12-Hour Nursing Shift: Debate Continues”
October 2014	“Another Rap on the 12-Hour Nursing Shift”
December 2, 2014	“ANA Position Statement on Nurse Fatigue”
September 29, 2015	“More on the 12-Hour Nursing Shift”
July 11, 2017	“The 12-Hour Shift Takes More Hits”
May 29, 2018	“More on Nursing Workload and Patient Safety”
September 4, 2018	“The 12-Hour Nursing Shift: Another Nail in the Coffin”
February 9, 2021	“Nursing Burnout”

Some of our other columns on nursing workload and missed nursing care/care left undone:

November 26, 2013	“Missed Care: New Opportunities?”
May 9, 2017	“Missed Nursing Care and Mortality Risk”
March 6, 2018	“Nurse Workload and Mortality”
May 29, 2018	“More on Nursing Workload and Patient Safety”
October 2018	“Nurse Staffing Legislative Efforts”
February 2019	“Nurse Staffing, Workload, Missed Care, Mortality”
July 2019	“HAI's and Nurse Staffing”
September 1, 2020	“NY State and Nurse Staffing Issues”
February 9, 2021	“Nursing Burnout”
August 2021	“The New NY State Law on Nursing Staffing”
January 2022	“Another Striking Nurse Staffing Study”

Some of our other columns on the role of fatigue in Patient Safety:

November 9, 2010	“12-Hour Nursing Shifts and Patient Safety”
April 26, 2011	“Sleeping Air Traffic Controllers: What About Healthcare?”
February 2011	“Update on 12-hour Nursing Shifts”
September 2011	“Shiftwork and Patient Safety”
November 2011	“Restricted Housestaff Work Hours and Patient Handoffs”
January 2012	“Joint Commission Sentinel Event Alert: Healthcare Worker Fatigue and Patient Safety”
January 3, 2012	“Unintended Consequences of Restricted Housestaff Hours”
June 2012	“June 2012 Surgeon Fatigue”

November 2012	“The Mid-Day Nap”
November 13, 2012	“The 12-Hour Nursing Shift: More Downsides”
July 29, 2014	“The 12-Hour Nursing Shift: Debate Continues”
October 2014	“Another Rap on the 12-Hour Nursing Shift”
December 2, 2014	“ANA Position Statement on Nurse Fatigue”
August 2015	“Surgical Resident Duty Reform and Postoperative Outcomes”
September 2015	“Surgery Previous Night Does Not Impact Attending Surgeon Next Day”
September 29, 2015	“More on the 12-Hour Nursing Shift”
September 6, 2016	“Napping Debate Rekindled”
April 18, 2017	“Alarm Response and Nurse Shift Duration”
July 11, 2017	“The 12-Hour Shift Takes More Hits”
February 13, 2018	“Interruptions in the ED”
April 2018	“Radiologists Get Fatigued, Too”
August 2018	“Burnout and Medical Errors”
September 4, 2018	“The 12-Hour Nursing Shift: Another Nail in the Coffin”
August 2020	“New Twist on Resident Work Hours and Patient Safety”
August 25, 2020	“The Off-Hours Effect in Radiology”
September 2020	“Daylight Savings Time Impacts Patient Safety?”
January 19, 2021	“Technology to Identify Fatigue?”
October 12, 2021	“FDA Approval of Concussion Tool – Why Not a Fatigue Detection Tool?”
February 2022	“Does Time of Day Matter?”
May 2, 2023	“ACGME Work Hour Guidelines Not Good Enough”
May 9, 2023	“Can Light Reduce Fatigue-Related Errors?”

References:

Kakacek B. Mandatory Overtime Restricted for NY Nurses. Nurse.org 2023; July 12, 2023

<https://nurse.org/articles/new-york-nurse-mandatory-overtime-restricted/>

New York State Department of Labor. Mandatory Overtime for Nurses. NYSDOL 2023;

<https://dol.ny.gov/mandatory-overtime-nurses>

The New York State Senate. SECTION 167. Restrictions on consecutive hours of work for nurses. Labor (LAB) CHAPTER 31, ARTICLE 5, TITLE 1

<https://www.nysenate.gov/legislation/laws/LAB/167>



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