

Frequently Asked Questions (FAQs)

New York's law banning mandatory overtime for RNs and LPNs (Labor Law, Section 167) goes into effect on July 1, 2009. Many nurses are asking questions about the provisions of the law and how they will be interpreted. The law states that nurses cannot be mandated to work beyond their regularly scheduled work hours.

What constitutes "regularly scheduled work hours"?

- Pre-scheduled on-call hours
- Time spent for the purpose of communicating shift reports
- Hours a nurse has agreed to work and is normally scheduled to work

How are these hours determined as a whole?

- They include budgeted hours allocated to the nurse's position by the employer
- If no such allocation exists, some other measure generally used to determine when an employee is supposed to work must be used, consistent with the collective bargaining agreement.
- An employer is not allowed to use on-call time as a substitute for MOT.

Are there exceptions?

Mandatory overtime is allowed if there is an emergency that requires MOT for the provision of safe patient care.

Has this been defined?

An emergency is defined as an unforeseen event that could not be prudently planned for and that does not regularly occur such as:

- Natural or other types of disasters that increase the need for nursing services,
- A federal, state or county declaration of emergency,
- A nurse engaged in an ongoing medical or surgical procedure,
- when necessary to provide safe patient care when no other alternative staffing is available

What events are *not* considered "emergencies"?

The state Department of Labor has declared the following events are NOT emergencies:

- Regular/routine sick calls
- Vacations
- Breaks during shifts
- Holidays
- Bereavement leave and leaves of absences

Is there anything that an employer must do before assigning MOT?

An employer must make a good-faith effort to have the OT covered voluntarily by first:

- Calling per diems
- Calling agency nurses
- Assigning floats
- Requesting additional day of work from off-duty employees
- Requesting voluntary OT from on-duty employees

Are any practice areas not covered by the law?

At present, the mandatory overtime ban does not apply to home care nurses.

If nurses refuse to work mandatory OT, can they be charged with patient abandonment?

The law states that, "Refusal to work beyond one's regularly scheduled hours shall not solely constitute patient abandonment or neglect except under the circumstances provided for under Section 3 of this law" which includes:

- A healthcare emergency (natural or other) that increases need for healthcare personnel, unexpectedly affecting the county or contiguous counties; A federal, state or local declaration of emergency affecting the county or contiguous counties;
- A healthcare employer declares an emergency (an unforeseen event unable to be planned for or one that does not regularly occurs;) or
- An ongoing medical or surgical procedure in which the nurse is actively engaged.

What should I do if my employer tells me that I have to stay beyond my scheduled hours?

- If you belong to a NYSNA local bargaining unit, contact a member of your executive committee or your NYSNA nursing representative.
- Fill out a Protest of Assignment form. Keep a copy for yourself.

Report the occurrence to the Department of Labor by calling 518-457-9000 / 888-4-NYSDOL or emailing nysdol@labor.state.ny.us

How will this law be enforced?

The DOL will investigate after violations are reported.

What will happen to the employer and the employee who reports a violation?

Violations of any provision of the Labor Law, the Industrial Code, or any rule, regulation, or lawful order of the Department of Labor is a misdemeanor and is punishable by fine or imprisonment, or both. An employer may not penalize or discharge an employee because he or she has complained to the Labor Department that the employer has violated any provision of the Labor Law.

If I have questions related to the law who can I contact?

You can contact the Department of Labor at the phone numbers and e-mail address above. Or, contact the NYSNA Education, Practice & Research Program at **800.724.NYRN (6976), ext 282** or practice@nysna.org. Please be advised that free consultation is available only to NYSNA members.



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