

2001 ASSEMBLY BILL 457

July 2, 2001 – Introduced by Representatives JOHNSRUD, UNDERHEIM, URBAN, WASSERMAN, LA FAVE, SINICKI, CARPENTER, BOYLE, KESTELL, MEYERHOFER, CULLEN, BLACK, BERCEAU, SHILLING, POCAN, TURNER, MUSSER, BOCK, J. LEHMAN, BALOW, PLALE, RICHARDS, MILLER, GRONEMUS, COGGS, COLON and SCHOOFF, cosponsored by Senators ROBSON, BURKE, ROSENZWEIG, ERPENBACH, BAUMGART, GROBSCHMIDT, GEORGE, RISSER and HANSEN. Referred to Committee on Health.

1 **AN ACT to amend** 111.322 (2m) (a) and 111.322 (2m) (b); and **to create** 106.54
 2 (7), 111.91 (2) (t), 146.999 and 230.45 (1) (m) of the statutes; **relating to:**
 3 mandatory overtime hours worked by health care workers employed by health
 4 care facilities and providing penalties.

Analysis by the Legislative Reference Bureau

Under current law, subject to certain exceptions, an employer must pay an employee who receives an hourly wage one and one-half times the employee's regular rate of pay for all hours worked in excess of 40 hours per week. Current law, however, subject to certain exceptions for child labor, does not prohibit an employer from requiring an employee to work in excess of 40 hours per week.

This bill prohibits a health care facility from requiring an employee who is involved in the direct care of patients or residents or in clinical services (health care worker) and who is paid an hourly wage to work for more than a work shift of eight, ten, or twelve hours that has been determined and agreed to before the performance of the work or to work for more than 40 hours per week (overtime) without the consent of the health care worker, except in cases of unforeseeable emergency in which the health care facility has first exhausted all other options. The bill also prohibits a health care facility from discharging or discriminating against a health care worker in promotion, compensation, or in terms, conditions, or privileges of employment for refusing to work overtime, for opposing a health care facility's practice of requiring health care workers to work overtime, for filing a complaint or

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attempting to enforce the right of a health care worker to refuse to work overtime, or for testifying or assisting in any action or proceeding to enforce that right.

A health care worker who is discharged or discriminated against in violation of the bill may file a complaint with the department of workforce development (DWD) or, in the case of a state employee, the personnel commission, and DWD or the personnel commission must process the complaint in the same manner that employment discrimination complaints are processed under current law, which processing may include the ordering of back pay, reinstatement, costs, and attorney fees. In addition, a health care facility that discharges or discriminates against a health care worker in violation of the bill may be required to forfeit not more than \$1,000 for a first violation, not more than \$5,000 for a violation committed within 12 months of a previous violation, and not more than \$10,000 for a violation committed within 12 months of two or more previous violations.

For purposes of coverage of the bill, the bill defines a “health care facility” as a hospital, nursing home, community-based residential facility, county home, county infirmary, county hospital, county mental health center, adult family home, assisted living facility, residential care apartment complex, rural medical center, hospice, mental health treatment facility, public dispensary for the diagnosis and treatment of tuberculosis, facility providing care under a continuing care contract, the University of Wisconsin Hospitals and Clinics Authority, the Wisconsin Veterans Home at King, the Southern Wisconsin Veterans Retirement Center, the Mendota Mental Health Institute, the Winnebago Mental Health Institute, the Milwaukee County Mental Health Complex, and the northern, central, and southern centers for the developmentally disabled.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 106.54 (7) of the statutes is created to read:

2 106.54 (7) The division shall receive complaints under s. 146.999 (4) (a) of
3 violations of s. 146.999 (2) and (3) and shall process those complaints in the same
4 manner that employment discrimination complaints are processed under s. 111.39.

5 **SECTION 2.** 111.322 (2m) (a) of the statutes is amended to read:

6 111.322 (2m) (a) The individual files a complaint or attempts to enforce any
7 right under s. 103.02, 103.10, 103.13, 103.28, 103.32, 103.455, 103.50, 104.12,

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1 109.03, 109.07, 109.075 ~~or~~, 146.997, or 146.999 or ss. 101.58 to 101.599 or 103.64 to
2 103.82.

3 **SECTION 3.** 111.322 (2m) (b) of the statutes is amended to read:

4 111.322 **(2m)** (b) The individual testifies or assists in any action or proceeding
5 held under or to enforce any right under s. 103.02, 103.10, 103.13, 103.28, 103.32,
6 103.455, 103.50, 104.12, 109.03, 109.07, 109.075 ~~or~~, 146.997, or 146.999 or ss. 101.58
7 to 101.599 or 103.64 to 103.82.

8 **SECTION 4.** 111.91 (2) (t) of the statutes is created to read:

9 111.91 **(2)** (t) Hours of work above the maximum hours specified in s. 146.999
10 (2) for health care workers, as defined in s. 146.999 (1) (c), employed by a health care
11 facility, as defined in s. 146.999 (1) (b). Nothing in this paragraph prohibits a health
12 care facility from bargaining on fewer hours of work than the hours provided in s.
13 146.999 (2).

14 **SECTION 5.** 146.999 of the statutes is created to read:

15 **146.999 Health care worker overtime. (1) DEFINITIONS.** In this section:

16 (a) “Department” means the department of workforce development.

17 (b) “Health care facility” means a facility, as defined in s. 647.01 (4), or any
18 hospital, nursing home, community-based residential facility, county home, county
19 hospital, county infirmary, county mental health center, assisted living facility,
20 residential care apartment complex, rural medical center, hospice, treatment
21 facility, or other place licensed, certified, or approved by the department of health
22 and family services under s. 49.70, 49.71, 49.72, 50.02, 50.03, 50.034, 50.35, 50.52,
23 50.90, 51.04, 51.08, or 51.09, an adult family home licensed or certified by the
24 department of health and family services or a county department under s. 50.032 or
25 50.033, or a facility under s. 45.365, 51.05, 51.06, or 252.10 or under ch. 233.

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1 (c) “Health care worker” means an employee of a health care facility who is
2 involved in the direct care of patients or residents or in clinical services.

3 **(2) MANDATORY OVERTIME LIMITED.** Except in cases of unforeseeable emergency
4 in which a health care facility has first exhausted all other options, a health care
5 facility may not require a health care worker who is paid an hourly wage to work for
6 more than a work shift of 8, 10, or 12 hours that has been determined and agreed to
7 before the performance of the work or to work for more than 40 hours per week
8 without the consent of the health care worker.

9 **(3) RETALIATION PROHIBITED.** A health care facility may not discharge or
10 discriminated against a health care worker in promotion, compensation, or in terms,
11 conditions, or privileges of employment for refusing to work for more than the hours
12 specified in sub. (2), opposing a practice prohibited under sub. (2), filing a complaint
13 or attempting to enforce any right under sub. (2), or testifying or assisting in any
14 action or proceeding to enforce any right under sub. (2).

15 **(4) ENFORCEMENT.** (a) Subject to par. (b), any health care worker who is
16 discharged or discriminated against in violation of sub. (3) may file a complaint with
17 the department, and the department shall process the complaint in the same manner
18 that employment discrimination complaints are processed under s. 111.39. If the
19 department finds that a violation of sub. (3) has been committed, the department
20 may order the health care facility to take such action under s. 111.39 as will effectuate
21 the purpose of this section.

22 (b) Any health care worker employed by a state agency, as defined in s. 111.32
23 (6), who is discharged or discriminated against in violation of sub. (3) may file a
24 complaint with the personnel commission, and the personnel commission shall
25 process the complaint in the same manner that employment discrimination

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1 complaints are processed under s. 111.39. If the personnel commission finds that a
2 violation of sub. (3) has been committed, the personnel commission may order the
3 health care facility to take such action under s. 111.39 as will effectuate the purpose
4 of this section.

5 (c) Section 111.322 (2m) applies to discharge or other discriminatory acts
6 arising in connection with any proceeding under par. (a) or (b).

7 **(5) CIVIL PENALTY.** In addition to ordering a health care facility that has violated
8 sub. (3) to take such action as will effectuate the purpose of this section, the
9 department or personnel commission may require the health care facility to forfeit
10 not more than \$1,000 for a first violation, not more than \$5,000 for a violation
11 committed within 12 months of a previous violation, and not more than \$10,000 for
12 a violation committed within 12 months of 2 or more previous violations. The
13 12-month period shall be measured by using the dates of the violations that resulted
14 in convictions.

15 **(6) POSTING OF NOTICE.** Each health care facility shall post, in one or more
16 conspicuous places where notices to employees are customarily posted, a notice in a
17 form approved by the department setting forth the rights of health care workers
18 under this section. Any health care facility that violates this subsection shall forfeit
19 not more than \$100 for each offense.

20 **SECTION 6.** 230.45 (1) (m) of the statutes is created to read:

21 230.45 **(1)** (m) Receive complaints under s. 146.999 (4) (b) of violations of s.
22 146.999 (2) and (3) and, except as provided in sub. (1m), process those complaints in
23 the same manner that employment discrimination complaints are processed under
24 s. 111.39.

25 **SECTION 7. Initial applicability.**

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1 (1) COLLECTIVE BARGAINING AGREEMENTS. This act first applies to a health care
2 worker, as defined in section 146.999 (1) (c) of the statutes, as created by this act, who
3 is affected by a collective bargaining agreement that contains provisions inconsistent
4 with this act on the day on which the collective bargaining agreement expires or is
5 extended, modified, or renewed, whichever occurs first.

6

(END)