

2003 DRAFTING REQUEST

Bill

Received: **01/24/2003**

Received By: **gmalaise**

Wanted: **As time permits**

Identical to LRB:

For: **Judith Robson (608) 266-2253**

By/Representing: **Kathy Soderbloom**

This file may be shown to any legislator: **NO**

Drafter: **gmalaise**

May Contact:

Addl. Drafters:

Subject: **Employ Priv - health and safety**

Extra Copies:

Submit via email: **YES**

Requester's email: **Sen.Robson@legis.state.wi.us**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Mandatory overtime for health care workers

Instructions:

See Attached--redraft 2001 SB 211 but also include laboratory technicians among covered employees and prisons and jails among the facilities covered.

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	gmalaise 01/28/2003	wjackson 02/19/2003		_____			S&L
/1			jfrantze 02/19/2003	_____	lemery 02/19/2003	mbarman 05/21/2003	

FE Sent For:

At intro.

<END>

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1/?	gmalaise	1 WLj 2/18	J 2/19	J/RS 2/19			

FE Sent For:

<END>

Malaise, Gordon

From: Soderbloom, Kathy
Sent: Friday, January 24, 2003 10:11 AM
To: Malaise, Gordon
Subject: Mandatory Overtime

Gordon,

Senator Robson is ready to take another round on Mandatory Overtime. Please draft 2001 SB 211 with the addition of laboratory technicians among the employees and the addition of prisons and jails among the facilities.

Thanks,

Kathy

-3346

Malaise, Gordon

From: Soderbloom, Kathy
Sent: Friday, January 24, 2003 12:04 PM
To: Malaise, Gordon
Subject: RE: Mandatory Overtime

Gordon,

The language should restrict coverage to those providing health services.

Thanks,

Kathy

-----Original Message-----

From: Malaise, Gordon
Sent: Friday, January 24, 2003 12:00 PM
To: Soderbloom, Kathy
Subject: RE: Mandatory Overtime

Kathy:

For prisons and jails do you mean all employees of the prison or jail, e.g., guards, or only employees providing health services in the prison or jail? The definition of "health care worker" in SB 211, i.e., "involved in the direct care of patients or residents . . .", arguably includes a guard because the definition does not specify that the "direct care" is direct *health care*.

Gordon

-----Original Message-----

From: Soderbloom, Kathy
Sent: Friday, January 24, 2003 10:11 AM
To: Malaise, Gordon
Subject: Mandatory Overtime

Gordon,

Senator Robson is ready to take another round on Mandatory Overtime. Please draft 2001 SB 211 with the addition of laboratory technicians among the employees and the addition of prisons and jails among the facilities.

Thanks,

Kathy

-1726/1

LPS:
Please
proof
amended
stats.
w/ stats.

2001 SENATE BILL 211

June 28, 2001 - Introduced by Senators ~~ROBSON, BURKE, ERPENBACH, BAUMGART, GROBSCHMIDT, GEORGE, RISSER, HANSEN and ROSENZWEIG~~, cosponsored by Representatives ~~JOHNSRUD, UNDERHEIM, URBAN, WASSERMAN, LA FAVE, POCAN, TURNER, MUSSER, BOCK, J. LEHMAN, BALOW, PLALE, CULLEN, BLACK, RICHARDS, MILLER, GRONEMUS, SINICKI, CARPENTER, BOYLE, KESTELL, MEYERHOFER, BERCEAU, SHILLING, SCHOFF, COLON and COGGS~~. Referred to Committee on Labor and Agriculture.

REGEN

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.**

providing direct health care services for

Analysis by the Legislative Reference Bureau

providing clinical or laboratory

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~~¹⁰, ~~ten~~¹², 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

(in)

(the)

SENATE BILL 211

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.

any

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.

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or a

or

or a

state prison, county jail, or county house of correction

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

(8)

(8)

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- 2)
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SECTION 1. 106.54 (7) of the statutes is created to read:

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

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

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

SENATE BILL 211

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

or state prison, county jail, or house of corrections

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20
25

any

county

SENATE BILL 211

providing direct health care for

providing clinical or laboratory

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

SENATE BILL 211

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. (n) ✓

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

21 230.45 (1) (n) 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.



in
RE

LRB-1726/1
GMM:jld:jf

Judith B. Robson

State Senator

- For your information.
- Per your request.
- Please let me know if I can be of further assistance.

Please accept the enclosed bill draft.
Thanks,

Judy

15 South, State Capitol
Post Office Box 7882, Madison, WI 53707-7882
Telephone (608) 266-2253
Toll-free 1-800-334-1468

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AN

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