



2009 ASSEMBLY BILL 152

March 17, 2009 - Introduced by Representatives PASCH, BENEDICT, BERCEAU, BLACK, COLON, CULLEN, DANOU, GRIGSBY, HIXSON, KESSLER, MASON, A. OTT, POCAN, POPE-ROBERTS, RICHARDS, SINICKI, STASKUNAS, TOLES, TURNER, A. WILLIAMS, YOUNG and ZEPNICK, cosponsored by Senators ROBSON, CARPENTER, COGGS, ERPENBACH, HANSEN, LEHMAN, MILLER, PLALE, TAYLOR and WIRCH. Referred to Committee on Health and Healthcare Reform.

1 **AN ACT** *to amend* 111.322 (2m) (a) and 111.322 (2m) (b); and *to create* 106.54
2 (8), 111.91 (2) (t) and 146.999 of the statutes; **relating to:** mandatory overtime
3 hours and on-call time worked by health care workers 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 of the health care facility, or an employee of a temporary help agency or professional employer organization placed with the health care facility, who is involved in providing direct health care services for patients, residents, or clients or in providing clinical or laboratory services and who is paid an hourly wage or is classified as a nonsupervisory employee for collective bargaining purposes (health care worker) to work for more than a regularly scheduled daily work shift that has been determined and agreed to before the performance of the work (overtime) or to be on on-call time, which the bill defines as time during which a health care worker is required to be ready to report to work on short notice if the need arises, in lieu of working overtime or as a means of circumventing the prohibition under the bill against mandatory overtime. The prohibitions under the bill do not apply in cases in which the health care worker consents to working overtime or to being on on-call time, in cases in

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which the health care worker’s continued presence through the completion of an ongoing medical or surgical procedure is essential to the health and safety of a patient, or in cases of unforeseeable emergency, which the bill defines as a major disaster or emergency declared by the president of the United States; a state of emergency, including a state of emergency related to public health, declared by the governor or by the governing body of a county, city, village, or town; or any other unanticipated or unavoidable disaster that substantially affects or increases the need for health care workers. The bill specifies, however, that “unforeseeable emergency” does not include a situation in which a health care facility has inadequate staff due to chronic short staffing or other foreseeable causes.

A health care worker who is discharged or discriminated against for refusing to work overtime or to be on on-call time in violation of the bill, for opposing a practice prohibited under the bill, for filing a complaint or attempting to enforce a right provided under the bill, or for testifying or assisting in any action or proceeding to enforce such a right may file a complaint with the Department of Workforce Development (DWD), and DWD 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 the bill, a “health care facility” is defined as any 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 or facility providing care under a continuing care contract; the University of Wisconsin Hospitals and Clinics Authority, the Mendota Mental Health Institute, the Winnebago Mental Health Institute, the Milwaukee County Mental Health Complex, the Wisconsin veterans homes at King, Union Grove, and Chippewa Falls, or the northern, central, and southern centers for the developmentally disabled; or a state prison, county jail, or county house of correction.

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 (8) of the statutes is created to read:

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1 106.54 (8) The division shall receive complaints under s. 146.999 (4) of
2 violations of s. 146.999 (2) and (3) and shall process those complaints in the same
3 manner that employment discrimination complaints are processed under s. 111.39.

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

5 111.322 (2m) (a) The individual files a complaint or attempts to enforce any
6 right under s. 103.02, 103.10, 103.13, 103.28, 103.32, 103.455, 103.50, 104.12,
7 109.03, 109.07, 109.075 ~~or~~, 146.997, or 146.999 or ss. 101.58 to 101.599 or 103.64 to
8 103.82.

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

10 111.322 (2m) (b) The individual testifies or assists in any action or proceeding
11 held under or to enforce any right under s. 103.02, 103.10, 103.13, 103.28, 103.32,
12 103.455, 103.50, 104.12, 109.03, 109.07, 109.075 ~~or~~, 146.997, or 146.999 or ss. 101.58
13 to 101.599 or 103.64 to 103.82.

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

15 111.91 (2) (t) Hours of work above the maximum hours specified in s. 146.999
16 (2) for health care workers, as defined in s. 146.999 (1) (c), employed by a health care
17 facility, as defined in s. 146.999 (1) (b). Nothing in this paragraph prohibits a health
18 care facility from bargaining on fewer hours of work than the hours provided in s.
19 146.999 (2).

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

21 **146.999 Health care worker overtime. (1) DEFINITIONS.** In this section:

22 (a) "Department" means the department of workforce development.

23 (b) "Health care facility" means a facility, as defined in s. 647.01 (4); any
24 hospital, nursing home, community-based residential facility, county home, county
25 hospital, county infirmary, county mental health center, assisted living facility,

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1 residential care apartment complex, rural medical center, hospice, treatment
2 facility, or other place licensed, certified, or approved by the department of health
3 services under s. 49.70, 49.71, 49.72, 50.02, 50.03, 50.034, 50.35, 50.52, 50.92, 51.04,
4 51.08, or 51.09; an adult family home licensed or certified by the department of
5 health services or a county department under s. 50.032 or 50.033; a facility under s.
6 45.50, 51.05, 51.06, or 252.10 or under ch. 233; or a state prison, county jail, or county
7 house of correction.

8 (c) “Health care worker” means any of the following:

9 1. An employee of a health care facility who is involved in providing direct
10 health care for patients, residents, or clients or in providing clinical or laboratory
11 services and who is paid an hourly wage or is classified as a nonsupervisory employee
12 for collective bargaining purposes.

13 2. An employee of a temporary help agency, as defined in s. 102.01 (2) (f), or of
14 a professional employer organization, as defined in s. 461.01 (5), who is placed with
15 a health care facility under a contract between the health care facility and the
16 temporary help agency or professional employer organization; who is involved in
17 providing direct health care for patients, residents, or clients or in providing clinical
18 or laboratory services; and who is paid an hourly wage or is classified as a
19 nonsupervisory employee for collective bargaining purposes.

20 (d) “On-call time” means time during which a health care worker is not on the
21 premises of a health care facility, but is required as a condition of employment to be
22 ready to report to those premises to work on short notice if the need arises.

23 (e) “Overtime” means time worked in excess of a regularly scheduled daily work
24 shift that has been determined and agreed to before the performance of the work.

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1 (f) “Unforeseeable emergency” means a major disaster or emergency declared
2 under 42 USC 5170, a state of emergency, including a state of emergency related to
3 public health, declared under s. 166.03 (1) (b) 1. or 166.23 (1), or any other
4 unanticipated or unavoidable disaster that substantially affects or increases the
5 need for health care workers. “Unforeseeable emergency” does not include a
6 situation in which a health care facility has inadequate staff due to chronic short
7 staffing or other foreseeable causes.

8 (2) MANDATORY OVERTIME LIMITED. Except in cases of unforeseeable emergency
9 in which a health care facility has first exhausted all other options, in cases in which
10 the health care worker consents, or in cases in which the health care worker’s
11 continued presence through the completion of an ongoing medical or surgical
12 procedure in which the health care worker is actively engaged is essential to the
13 health and safety of a patient, a health care facility may not require a health care
14 worker to work overtime or require a health care worker to be on on-call time in lieu
15 of working overtime or as a means of circumventing the prohibition under this
16 subsection against mandatory overtime.

17 (3) RETALIATION PROHIBITED. A health care facility may not discharge or
18 discriminate against a health care worker in promotion, in compensation, or in the
19 terms, conditions, or privileges of employment for refusing to work overtime or to be
20 on on-call time in violation of sub. (2), opposing a practice prohibited under sub. (2),
21 filing a complaint or attempting to enforce any right under sub. (2), or testifying or
22 assisting in any action or proceeding to enforce any right under sub. (2).

23 (4) ENFORCEMENT. A health care worker who is discharged or discriminated
24 against in violation of sub. (3) may file a complaint with the department, and the
25 department shall process the complaint in the same manner that employment

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1 discrimination complaints are processed under s. 111.39. If the department finds
2 that a violation of sub. (3) has been committed, the department may order the health
3 care facility to take such action under s. 111.39 as will effectuate the purpose of this
4 section. Section 111.322 (2m) applies to discharge or other discriminatory acts
5 arising in connection with any proceeding under this subsection.

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

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

SECTION 6. Initial applicability.

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

24 (END)