

ASSEMBLY BILL

No. 840

Introduced by Assembly Member Ridley-Thomas

February 26, 2015

An act to add Section 19851.2 to the Government Code, relating to state employees.

LEGISLATIVE COUNSEL'S DIGEST

AB 840, as introduced, Ridley-Thomas. Nurses and certified nurse assistants: overtime.

The State Civil Service Act generally requires the workweek of state employees to be 40 hours, and the workday of state employees to be 8 hours. Under the act, it is the policy of the state to avoid the necessity for overtime work whenever possible.

This bill, commencing January 1, 2017, would prohibit a nurse or Certified Nursing Assistant (CNA), as defined, employed by the State of California in a specified type of facility from being compelled to work in excess of the regularly scheduled workweek or work shift, except under certain circumstances. The bill would authorize a nurse or CNA to volunteer or agree to work hours in addition to his or her regularly scheduled workweek or work shift, but the refusal to accept those additional hours would not constitute patient abandonment or neglect or be grounds for discrimination, dismissal, discharge, or any other penalty or employment decision adverse to the nurse or CNA.

This bill would make a related statement of legislative intent.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. It is the intent of the Legislature to ensure that
2 there is a process that management and supervisors in a state health
3 care facility are required to follow to avoid on-the-spot mandatory
4 overtime of any nurse or certified nursing assistant (CNA) whose
5 regularly scheduled work shift is complete, and to prevent
6 circumstances where an employee is stopped at the gate of, for
7 example, a Department of Corrections and Rehabilitation and
8 California Correctional Health Care Services facility, and is
9 instructed to return to work at the end of the employee's regularly
10 scheduled work shift. It is the intent of the Legislature to prohibit
11 a state facility that employs nurses or CNAs from using mandatory
12 overtime as a scheduling tool, or as an excuse for fulfilling an
13 operational need that results from a management failure to properly
14 staff those state facilities.

15 SEC. 2. Section 19851.2 is added to the Government Code, to
16 read:

17 19851.2. (a) As used in this section:

18 (1) "Nurse" means all classifications of registered nurses
19 represented by State Bargaining Unit 17, or the Licensed
20 Vocational Nurse classifications represented by State Bargaining
21 Unit 20.

22 (2) "CNA" means all Certified Nursing Assistant classifications
23 represented by State Bargaining Unit 20.

24 (3) "Facility" means any facility that provides clinically related
25 health services that is operated by the Division of Correctional
26 Health Care Services of the Department of Corrections and
27 Rehabilitation, the Department of Corrections and Rehabilitation,
28 the State Department of State Hospitals, the Department of Veteran
29 Affairs, or the State Department of Developmental Services in
30 which a nurse or CNA works as an employee of the state.

31 (4) "Emergency situation" means any of the following:

32 (A) An unforeseeable declared national, state, or municipal
33 emergency.

34 (B) A highly unusual or extraordinary event that is unpredictable
35 or unavoidable and that substantially affects providing needed
36 health care services or increases the need for health care services,
37 which includes any of the following:

38 (i) An act of terrorism.

- 1 (ii) A natural disaster.
- 2 (iii) A widespread disease outbreak.
- 3 (iv) A warden, superintendent, or executive director-declared
- 4 emergency, or severe emergency that necessitates the assistance
- 5 of an outside agency.
- 6 (b) A facility shall not require a nurse or CNA to work in excess
- 7 of a regularly scheduled workweek or work shift. A nurse or CNA
- 8 may volunteer or agree to work hours in addition to his or her
- 9 regularly scheduled workweek or work shift but the refusal by a
- 10 nurse or CNA to accept those additional hours shall not constitute
- 11 either of the following:
 - 12 (1) Grounds for discrimination, dismissal, discharge, or any
 - 13 other penalty or employment decision adverse to the nurse or CNA.
 - 14 (2) Patient abandonment or neglect, except under circumstances
 - 15 provided for in the Nursing Practice Act (Chapter 6 (commencing
 - 16 with Section 2700) of Division 2 of the Business and Professions
 - 17 Code).
- 18 (c) This section shall not apply in any of the following situations:
 - 19 (1) To a nurse or CNA participating in a surgical procedure in
 - 20 which the nurse is actively engaged and whose continued presence
 - 21 through the completion of the procedure is needed to ensure the
 - 22 health and safety of the patient.
 - 23 (2) If a catastrophic event occurs in a facility and both of the
 - 24 following factors apply:
 - 25 (A) The catastrophic event results in such a large number of
 - 26 patients in need of immediate medical treatment that the facility
 - 27 is incapable of providing sufficient nurses or CNAs to attend to
 - 28 the patients without resorting to mandatory overtime.
 - 29 (B) The catastrophic event is an unanticipated and nonrecurring
 - 30 event.
 - 31 (3) If an emergency situation occurs.
- 32 (d) Nothing in this section shall be construed to affect the
- 33 Nursing Practice Act (Chapter 6 (commencing with Section 2700)
- 34 of Division 2 of the Business and Professions Code), the Vocational
- 35 Nursing Practice Act (Chapter 6.5 (commencing with Section
- 36 2840) of Division 2 of the Business and Professions Code), or a
- 37 registered nurse's duty under the standards of competent
- 38 performance.
- 39 (e) Nothing in this section shall be construed to preclude a
- 40 facility from hiring part-time or intermittent employees.

- 1 (f) Nothing in this section shall prevent a facility from providing
- 2 employees with more protections against mandatory overtime than
- 3 the minimum protections established pursuant to this section.
- 4 (g) This section shall become operative on January 1, 2017.

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