

AMENDED IN SENATE AUGUST 18, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 840

Introduced by Assembly Member Ridley-Thomas

February 26, 2015

An act to add Section 19851.2 to, and to add and repeal Section 19851.3 of, the Government Code, relating to state employees.

LEGISLATIVE COUNSEL'S DIGEST

AB 840, as amended, Ridley-Thomas. Nurses and certified-nurse nursing 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, 2019, 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 require such a facility to establish a 8-member joint labor management task force, with membership as prescribed, to meet quarterly to develop specific recommendations and a plan to reduce or eliminate mandatory overtime. The bill would require a task force, on

or before November 1, 2018, to prepare and submit to the Legislature a report on its recommendations. Those task force and report provisions would be repealed on January 1, 2019.

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The 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.

- 1 (4) “Emergency situation” means any of the following:
2 (A) An unforeseeable declared national, state, or municipal
3 emergency.
4 (B) A highly unusual or extraordinary event that is unpredictable
5 or unavoidable and that substantially affects providing needed
6 health care services or increases the need for health care services,
7 which includes any of the following:
8 (i) An act of terrorism.
9 (ii) A natural disaster.
10 (iii) A widespread disease outbreak.
11 (iv) A ~~warden, superintendent,~~ *warden-, superintendent-*, or
12 executive director-declared emergency, or severe emergency that
13 necessitates the assistance of an outside agency.
14 (b) A facility shall not require a nurse or CNA to work in excess
15 of a regularly scheduled workweek or work shift. A nurse or CNA
16 may volunteer or agree to work hours in addition to his or her
17 regularly scheduled workweek or work shift but the refusal by a
18 nurse or CNA to accept those additional hours shall not constitute
19 either of the following:
20 (1) Grounds for discrimination, dismissal, discharge, or any
21 other penalty or employment decision adverse to the nurse or CNA.
22 (2) Patient abandonment or neglect, except under circumstances
23 provided for in the Nursing Practice Act (Chapter 6 (commencing
24 with Section 2700) of Division 2 of the Business and Professions
25 Code).
26 (c) This section shall not apply in any of the following situations:
27 (1) To a nurse or CNA participating in a surgical procedure in
28 which the nurse is actively engaged and whose continued presence
29 through the completion of the procedure is needed to ensure the
30 health and safety of the patient.
31 (2) If a catastrophic event occurs in a facility and both of the
32 following factors apply:
33 (A) The catastrophic event results in such a large number of
34 patients in need of immediate medical treatment that the facility
35 is incapable of providing sufficient nurses or CNAs to attend to
36 the patients without resorting to mandatory overtime.
37 (B) The catastrophic event is an unanticipated and nonrecurring
38 event.
39 (3) If an emergency situation occurs.

1 (d) Nothing in this section shall be construed to affect the
 2 Nursing Practice Act (Chapter 6 (commencing with Section 2700)
 3 of Division 2 of the Business and Professions Code), the Vocational
 4 Nursing Practice Act (Chapter 6.5 (commencing with Section
 5 2840) of Division 2 of the Business and Professions Code), or a
 6 registered nurse’s duty under the standards of competent
 7 performance.

8 (e) Nothing in this section shall be construed to preclude a
 9 facility from hiring part-time or intermittent employees.

10 (f) Nothing in this section shall prevent a facility from providing
 11 employees with more protections against mandatory overtime than
 12 the minimum protections established pursuant to this section.

13 (g) This section shall become operative on January 1, ~~2017~~.
 14 2019.

15 *SEC. 3. Section 19851.3 is added to the Government Code, to*
 16 *read:*

17 *19851.3. (a) Each facility, as defined in paragraph (3) of*
 18 *subdivision (a) of Section 19851.2, shall establish a joint labor*
 19 *management task force to make recommendations and develop a*
 20 *plan to reduce or eliminate mandatory overtime. A joint labor*
 21 *management task force shall be composed of eight members, which*
 22 *shall consist of four representatives for the facility and four labor*
 23 *union representatives. The joint labor management task force shall*
 24 *meet quarterly to develop recommendations.*

25 *(b) The recommendations shall include the following:*

26 *(1) Patient and staff needs by tracking trends in patient acuity,*
 27 *overtime use, and overall staffing procedures.*

28 *(2) Training, for applicable employees, on core staffing*
 29 *principles, best practices, the appropriate use of overtime, and*
 30 *ways to avoid mandatory overtime.*

31 *(3) Assessment and staffing best practices, a contingency staffing*
 32 *system, avenues for staff engagement in the scheduling process,*
 33 *and creative scheduling solutions.*

34 *(c) (1) On or before November 1, 2018, the task force shall*
 35 *prepare and submit to the Legislature a report on its*
 36 *recommendations, including the following information:*

37 *(A) The number of voluntary and mandatory overtime hours at*
 38 *each facility for registered nurses, licensed vocational nurses, and*
 39 *certified nursing assistants. Each facility shall submit the total*
 40 *number of voluntary and mandatory overtime hours worked.*

1 (B) *The number of complaints investigated and complaints that*
2 *resulted in a civil action or criminal prosecution.*

3 (C) *Recommendations for modifying, eliminating, or continuing*
4 *the task force's activities.*

5 (D) *Recommendations for statutory or regulatory changes, or*
6 *both, needed to better allow for enforcement.*

7 (2) *The report required by this subdivision shall be submitted*
8 *to the Legislature pursuant to Section 9795 of the Government*
9 *Code.*

10 (d) *This section shall remain in effect only until January 1, 2019,*
11 *and as of that date is repealed.*

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