

Introduced by Senator Mendoza

February 27, 2015

An act to add Section 19851.4 to the Government Code, relating to state employees.

LEGISLATIVE COUNSEL'S DIGEST

SB 780, as introduced, Mendoza. Psychiatric technicians and psychiatric technician 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.

The Psychiatric Technicians Law provides for the licensure and regulation of psychiatric technicians (PTs) by the Board of Vocational Nursing and Psychiatric Technicians of the State of California.

This bill would prohibit a PT or psychiatric technician assistant (PTA) 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 PT or PTA 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 PT or PTA. The bill would require management and supervisors to consider employees in a specified order of priority in order to fulfill the additional staffing needs of a facility.

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 psychiatric technician (PT) or psychiatric
5 technician assistant (PTA) whose regularly scheduled work shift
6 is complete, and to prevent circumstances where an employee is
7 stopped at the gate of, for example, a Department of Corrections
8 and Rehabilitation and California Correctional Health Care
9 Services facility, and is instructed to return to work at the end of
10 the employee's regularly scheduled work shift. It is the intent of
11 the Legislature to prohibit a state facility that employs PTs or PTAs
12 from using mandatory overtime as a scheduling tool, or as an
13 excuse for fulfilling an operational need that results from a
14 management failure to properly staff those state facilities.

15 SEC. 2. Section 19851.4 is added to the Government Code, to
16 read:

17 19851.4. (a) As used in this section:

18 (1) "Emergency situation" means any of the following:

19 (A) An unforeseeable declared national, state, or municipal
20 emergency.

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

25 (i) An act of terrorism.

26 (ii) A natural disaster.

27 (iii) A widespread disease outbreak.

28 (iv) An emergency declared by a warden, superintendent, or
29 executive director, or a severe emergency that necessitates the
30 assistance of an outside agency.

31 (2) "Facility" means any facility that provides clinically related
32 health services that is operated by the Division of Correctional
33 Health Care Services of the Department of Corrections and
34 Rehabilitation, the Department of Corrections and Rehabilitation,
35 the State Department of State Hospitals, or the State Department
36 of Developmental Services in which a PT or PTA works as an
37 employee of the state.

1 (3) “Management or supervisor” means any person or group of
2 persons acting directly or indirectly on behalf of, or in the interest
3 of, the facility, whose duties and responsibilities include facilitating
4 staffing needs.

5 (4) “On call or on standby” means alternative staff who are not
6 currently working on the premises of the facility and who satisfy
7 either of the following criteria:

8 (A) Are compensated for their availability.

9 (B) Have agreed to be available to come to the facility on short
10 notice, if the need arises.

11 (5) “PT” or “PTA” means all classifications of psychiatric
12 technician or psychiatric technician assistant.

13 (b) A facility shall not require a PT or PTA to work in excess
14 of a regularly scheduled workweek or work shift. A PT or PTA
15 may volunteer or agree to work hours in addition to his or her
16 regularly scheduled workweek or work shift but the refusal by a
17 PT or PTA to accept those additional hours shall not constitute
18 either of the following:

19 (1) Grounds for discrimination, dismissal, discharge, or any
20 other penalty or employment decision adverse to the PT or PTA.

21 (2) Patient abandonment or neglect.

22 (c) In order to avoid the use of mandatory overtime as a
23 scheduling tool, management and supervisors shall consider
24 employees to fulfill the additional staffing needs of a facility in
25 the following priority order:

26 (1) First priority shall be given to employees who volunteer or
27 agree to work hours in addition to their regularly scheduled
28 workweek or work shift.

29 (2) Second priority shall be given to individuals who are
30 part-time or intermittent employees.

31 (3) Third priority shall be given to employees who are on call
32 or on standby.

33 (d) This section shall not apply in any of the following
34 situations:

35 (1) To a PT or PTA participating in a surgical procedure in
36 which the nurse is actively engaged and whose continued presence
37 through the completion of the procedure is needed to ensure the
38 health and safety of the patient.

39 (2) If a catastrophic event occurs in a facility and both of the
40 following factors apply:

1 (A) The catastrophic event results in such a large number of
2 patients in need of immediate medical treatment for which the
3 facility is incapable of providing sufficient PTs or PTAs to attend
4 to the patients without resorting to mandatory overtime.

5 (B) The catastrophic event is an unanticipated and nonrecurring
6 event.

7 (3) If an emergency situation occurs.

8 (e) This section shall not be construed to affect the Psychiatric
9 Technicians Law (Chapter 10 (commencing with Section 4500)
10 of Division 2 of the Business and Professions Code) or a PT or
11 PTA's duty under the standards of competent performance.

12 (f) This section shall not be construed to preclude a facility from
13 hiring part-time or intermittent employees.

14 (g) This section shall not prevent a facility from providing
15 employees with more protections against mandatory overtime than
16 the minimum protections established pursuant to this section.