

# SENATE . . . . . No. 872

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## The Commonwealth of Massachusetts

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In the Year Two Thousand Nine  
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An Act to Prohibit Mandatory Overtime for the Health Care Workforce..

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1           SECTION 1. Chapter 111 of the General Laws is hereby amended by adding the  
2 following section:

3           Section 221. As used in this section, the following words shall, unless the context  
4 requires otherwise, have the following meanings:

5           “Facility”, a hospital licensed under section 51, the teaching hospital of the University of  
6 Massachusetts medical school, any licensed private or state-owned and state-operated general  
7 acute care hospital, an acute psychiatric hospital, an acute care specialty hospital, or any acute  
8 care unit within a state-operated facility. As used in this section, “facility” shall not include  
9 rehabilitation facilities or long-term acute care facilities.

10          “Health Care Workforce”, facility personnel that have an effect upon the delivery of  
11 quality care to patients, including but not limited to registered nurses, licensed practical nurses,  
12 unlicensed assistive personnel and/or other service, maintenance, clerical, professional and/or

technical workers and other health care workers. The health care workforce includes personnel employed through a personnel agency that contracts with facility to provide personnel.

"Facility-Wide Staffing Emergency", an unforeseen staffing shortage that could not be prudently planned for by the facility and does not regularly occur; or an ongoing medical or surgical procedure in which a member of the healthcare workforce is actively engaged progress if the absence of the employee could have an adverse effect on the patient. The term does not include vacancies that arise as a result of chronic understaffing.

"Mandatory overtime", any employer request with respect to overtime, which, if refused or declined by the employee, may result in an adverse employment consequence to the employee. The term overtime means any hours exceeding the scheduled daily work shift or other duty period. The agreed upon scheduled work shift shall include pre-scheduled on-call time and time spent for the purpose of communicating shift reports regarding patient status. No employer may use on-call time as a substitute for mandatory overtime. Mandatory overtime shall include an employer, directly or indirectly, requiring a member of the healthcare workforce to work either more than twelve hours in a twenty-four hour period or more than eighty hours in a consecutive fourteen-day period.

(a) Except in cases of declared public emergencies, or a facility-wide staffing emergency, no facility may employ mandatory overtime with respect to any member of the health care workforce.

(b) Whenever a facility determines there is a facility-wide staffing emergency, the facility shall, before requiring mandatory overtime, make a good faith effort to have overtime covered on a voluntary basis.

(c) A member of the health care workforce who is required to work more than twelve consecutive hours pursuant to subsection (a) or who volunteers to work more than twelve consecutive hours must be given at least ten consecutive hours of off-duty time immediately after the worked overtime.

(d) The provisions of this section are intended as a remedial measure to protect the public health and the quality of patient care, and shall not be construed to diminish or waive any rights of the health care workforce pursuant to any other law, regulation, or collective bargaining agreement. The refusal of an employee to accept work in excess of the limitations set forth in subsections (a) and (c) shall not be grounds for discrimination, dismissal, discharge or any other employment decision.

(e) Nothing in this section shall prohibit a member of the health care workforce from voluntarily working overtime.

(f) Nothing in this act shall prevent an employer or facility from providing a member of the health care workforce more protection from mandatory overtime than the minimum established under this act.

(g) This law shall be effective and all facilities shall meet the applicable requirements of Section 221 of Chapter 111 of the General Laws on or before October 1, 2010.

(h) The department of public health shall, on or before July 1, 2009, promulgate regulations to implement the requirements this section. These regulations shall include a system to levy an administrative fine on any facility that violates this act or any regulation issued under this act. The fine shall be not less than \$100 and not greater than \$1,000 for each violation.