

1 (3) "Health care facility" means any private, public or state hospital;

2 (4) "Regular hourly wage" means the amount that an employee is regularly paid for each
3 hour of work as determined by dividing the total hours of work during the week into the
4 employee's total earnings for the week, exclusive of pay for overtime work;

5 (5) "Unforeseeable emergent circumstance" means an unpredictable occurrence relating
6 to health care delivery that requires immediate action, and which shall include a major power
7 outage, a public health emergency, an irregular increase in patient census, or an irregular increase
8 in the number of employees not reporting for predetermined scheduled work shifts.

9 (6) "On-call time" means time spent by an employee who is not working on the premises
10 of the place of employment but who is compensated for availability or who, as a condition of
11 employment, has agreed to be available to return to the premises of the place of employment on
12 short notice if the need arises.

13 (7) "Reasonable efforts" means that the employer shall: (a) seek persons who volunteer to
14 work extra time from all available qualified staff who are working at the time of the
15 unforeseeable emergent circumstance; (b) contact all qualified employees who have made
16 themselves available to work extra time; and (c) seek the use of per diem staff.

17 **23-17.20-3. Overtime requirement.** -- (a) No health care facility as defined above shall
18 require an employee to accept work in excess of an agreed to, predetermined scheduled work shift
19 of eight (8), ten (10), or twelve (12) hours.

20 (b) No health care facility shall require an employee to work overtime in excess of an
21 agreed to, predetermined scheduled work shift of eight (8), ten (10), or twelve (12) hours, except
22 in an unforeseeable emergent circumstance. In no case shall a health care facility require an
23 employee to work in excess of twelve (12) consecutive hours. The refusal of any employee to
24 accept such overtime work shall not be grounds for discrimination, dismissal, discharge, or any
25 other penalty or employment decision adverse to the employee.

26 (c) Nothing in this chapter shall be construed to limit voluntary overtime in excess of an
27 agreed to, predetermined scheduled work shift of eight (8), ten (10), or twelve (12) hours.

28 (d) The provisions of this section shall not apply in the case of an unforeseeable emergent
29 circumstance when: (1) the overtime is required only as a last resort and is not used to fill
30 vacancies resulting from chronic short staffing; and (2) the employer has exhausted reasonable
31 efforts to obtain staffing.

32 (e) The requirement that the employer shall exhaust reasonable efforts to obtain staffing
33 shall not apply in the event of any declared national, state or municipal emergency or a disaster or
34 other catastrophic event which substantially affects or increases the need for health care services.

1 **23-17.20-4. Penalty for violations. -- Any employer who violates or fails to comply with**
2 **any of the provisions of this chapter shall be subject to a fine of three hundred dollars (\$300) for**
3 **each violation of this chapter, which shall be paid to the center for health professions, as**
4 **established in section 23-17.20.2. Until such time as the center for health professions is operating,**
5 **the fines shall be payable to the general fund. The department of labor and training shall**
6 **determine if a violation of this chapter occurs, and shall levy the appropriate fine.**

7 **23-17.20-5. Collective bargaining agreements. -- The provisions of this chapter shall**
8 **not negate any employee rights or benefits existing under collective bargaining agreements.**

9 **23-17.20-6. Severability. -- If any provision of this chapter, or the application of any**
10 **provision to any person or circumstance, is held invalid, the remainder of the chapter and the**
11 **application of the provision to other persons or circumstances are not affected by the invalidity.**

12 SECTION 2. This act shall take effect on March 4, 2008.

=====
LC00016/SUB A
=====

EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T

RELATING TO HEALTH AND SAFETY - - HEALTH CARE FACILITIES STAFFING

1 This act would restrict mandatory overtime for nurse employees of private, public and
2 state hospitals.

3 This act would take effect on March 4, 2008.

=====
LC00016/SUB A
=====