

**WEST VIRGINIA  
SECRETARY OF STATE  
BETTY IRELAND  
ADMINISTRATIVE LAW DIVISION**

Form #4

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2005 JAN 18 P 1:00

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF RULE MODIFICATION OF A PROPOSED RULE**

AGENCY: West Virginia Division of Labor TITLE NUMBER: 42

CITE AUTHORITY: W.Va. Code §21-5F-4

AMENDMENT TO AN EXISTING RULE: YES ☐ NO ☒

IF YES, SERIES NUMBER OF RULE BEING AMENDED: \_\_\_\_\_

TITLE OF RULE BEING AMENDED: \_\_\_\_\_

\_\_\_\_\_

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 30

TITLE OF RULE BEING PROPOSED: Nurse Overtime Complaints

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THE ABOVE PROPOSED LEGISLATIVE RULES, FOLLOWING REVIEW BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE, IS HEREBY MODIFIED AS A RESULT OF REVIEW AND COMMENT BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE. THE ATTACHED MODIFICATIONS ARE FILED WITH THE SECRETARY OF STATE.

  
Authorized Signature

\$3.00

## **TITLE 42**

**FILED**

### **West Virginia Division of Labor Legislative Rule**

2006 JAN 18 P 1:01

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

### **Nurse Overtime Complaints**

### **Series 30**

#### **§42-30-1. General.**

1.1. Scope. This legislative rule governs the procedures for the handling of nurse overtime complaints against hospitals in accordance with W.Va. Code §21-5F-4 and W.Va. Code §29A-5-1 et seq.

1.2. Authority. W.Va. Code §21-5F-4.

1.3. Filing Date.

1.4. Effective Date.

#### **§42-30-2. Application and Enforcement.**

2.1. Application. This legislative rule applies to the West Virginia Division of Labor and all persons, firms or corporations governed or otherwise defined under the coverage of the West Virginia Code §21-5F-1 et seq.

2.2. Enforcement. The enforcement of this rule is vested with the West Virginia Division of Labor in accordance with West Virginia Code §21-1-3 et seq.

#### **§42-30-3. Definitions.**

3.1. The "Act" means the Nurse Overtime and Patient Safety Act, W.Va. Code §21-5F-1 et seq., and this rule.

3.2. "Commissioner" means the commissioner of the West Virginia Division of Labor.

3.3. "Complaint" means the filing of allegations which indicate a violation of the Act or this rule and which requires an investigation by the division.

3.4. "Division" means the West Virginia Division of Labor.

3.5. "Hospital" means a facility licensed under the provisions of article five-v, chapter sixteen of this code, but does not include hospitals operated by state or federal agencies.

3.6. "Nurse" means a certified or licensed practical nurse or a registered nurse who is providing nursing services and is involved in direct patient care activities or clinical services, but does not include certified nurse anesthetists. Nurse managers are included with respect to their delivery of in-hospital patient care.

3.7. "On-call time" means time when the employee is off the clock and away from the employer's premises but the employer maintains certain restrictions as to the employee's use of that time. On-call time may exist while on the employer's premises but is always regarded as on the clock.

3.8. "Overtime" means, for the purpose of this rule, the hours worked in excess of an agreed upon, predetermined, regularly scheduled shift.

3.9. "Regularly scheduled shift" means a routinely scheduled work period which is predetermined and does not distinguish between full-time or part-time.

3.10. "Taking action against" means discharging; disciplining; threatening; reporting to the board of nursing; discriminating against; or penalizing regarding compensation, terms, conditions, location or privileges of employment.

3.11. "Twenty-four hour period" means the twenty-four hours immediately following a break of at least eight hours.

3.12. "Unforeseen emergent situation" means an unusual, unpredictable or unforeseen circumstance such as, but not limited to, an act of terrorism, a disease outbreak, adverse weather conditions or natural disasters. An unforeseen emergent situation does not include situations in which the hospital has reasonable knowledge of increased patient volume or decreased staffing, including, but not limited to, scheduled vacations and scheduled health care worker medical leave.

#### **§42-30-4. Overtime Restrictions.**

4.1. No nurse may be required to work beyond their regularly scheduled shift except in unforeseen emergent situations that jeopardizes patient safety, when required to fulfill prescheduled on-call time, or when required to complete a single patient care procedure already in progress.

4.2. No nurse may be permitted to work in excess of sixteen consecutive hours in a twenty-four hour period, including voluntary overtime except in unforeseen emergent situations that jeopardizes patient safety, when required to fulfill prescheduled on-call time, or when required to complete a single patient care procedure already in progress.

4.3. On-call time which is off premises and compensation is not required by federal or state law shall not be considered as time worked when calculating the maximum permissible hours to be worked.

4.4. On-call hours which are on the employer's premises or for which law required the employee to be paid compensation shall be considered as work time when calculating the maximum permissible hours to be worked.

4.5. A nurse shall be given a break of at least eight hours after working twelve consecutive hours. If the twelve hour maximum is reached during a scheduled shift, the break may be delayed until the end of the shift or the sixteen hour maximum as required by W.Va. Code §21-5F and this rule.

4.6. An employer is prohibited from taking action against a nurse who refuses an assignment of overtime in violation of W.Va. Code §21-5F or for any action by a nurse relative to his or her rights to refuse overtime assignments. The filing of a complaint is considered a nurse's right under the provisions of W.Va. Code §21-5F and this rule.

#### **§42-30-5. Confidentiality of Records.**

8.1. All investigations, complaints, reports, records, proceedings and other information received by the Division and related to complaints pursuant to this rule, including the identity of the complainant or respondent, are confidential and shall not be knowingly and improperly disclosed by any person, the commissioner or Division staff, except as follows:

(a) Upon a finding that probable cause exists to believe that a respondent has violated the provisions of the act, the complaint and all reports, records, non-privileged and non-deliberative materials introduced at any probable cause hearing held pursuant to the complaint are thereafter not confidential: Provided, that the confidentiality of the information shall remain in full force and effect until the respondent has been served with a copy of the statement of charges;

(b) Any subsequent hearing held in the matter for the purpose of receiving evidence or the arguments of the parties or their representatives shall be open to the public and all reports, records and non-deliberative materials introduced into evidence at the subsequent hearing, as well as the commissioner's orders, are not confidential;

(c) The complaint as well as the identity of the complainant shall be disclosed to a person named as respondent in any complaint filed immediately upon the respondent's request; or

(d) Where the commissioner or the Division is otherwise required by the provisions of

the Act to disclose the information or to proceed in a manner that disclosure is necessary and required to fulfill the requirements.

8.2. If, in a specific case, the commissioner or Division finds that there is a reasonable likelihood that the dissemination of information or opinion in connection with a pending or imminent proceeding will interfere with a fair hearing or otherwise prejudice the due administration of justice, the commissioner or Division shall order that all or a portion of the information communicated to the commissioner or the Division to cause an investigation and all allegations of violations or misconduct contained in a complaint is confidential, and the person providing the information or filing a complaint is bound to confidentiality until further order of the commissioner.