New York Amends Its Labor Law Restricting Mandatory Overtime for Nurses

On Dec. 30, 2022, Gov. Hochul signed a bill (A.286/S.1997) that amends New York Labor Law § 167. Originally enacted in 2009, Section 167 restricts "healthcare employers" from requiring nurses to work beyond their regularly scheduled hours, with four limited exceptions, where the overtime is during or due to:

1. A health care disaster that increases the need for healthcare personnel;
2. A federal, state or county declaration of emergency;
3. An unforeseen emergency, and necessary to provide safe patient care that could not be prudently planned for by the employer and does not regularly occur; or
4. An ongoing medical or surgical procedure in which the nurse is actively engaged and whose continued presence is needed to ensure the health and safety of the patient.

The law defines "healthcare employers" to include employers operating pursuant to Article 28 of the Public Health Law, including hospitals, nursing homes, diagnostic treatment centers, and state-operated facilities licensed under various state laws. "Nurses" are defined as registered nurses (RNs) and licensed practical nurses (LPNs).

The amendment establishes monetary penalties for violations found by the Department of Labor following investigation: (i) $1,000 for a first violation, (ii) $2,000 for a second violation, and (iii) $3,000 for third and subsequent violations. Additionally, for each violation, the healthcare employer would be required to pay the affected nurse an additional 15% of the overtime payment.

Industry associations and healthcare employers strongly opposed the expansion of Section 167, stressing that the underlying assumptions – that penalties would deter mandatory overtime assignments – were flawed given ongoing and widespread staffing shortages and minimum nurse/hour requirements now imposed on nursing homes. Additionally, many commenters raised concerns that the new penalties will diminish budgets to recruit new staff and pay existing staff, and possibly incentivize employees to refuse *voluntary* overtime.

Gov. Hochul did veto two other bills that would have further expanded the reach of Section 167. One bill (A.181/S.4885) would have expanded application of the law to home care agencies. The other bill (A.8874/S.8063) would have narrowed the existing exceptions to the overtime ban by reinstating the ban within three days after a healthcare disaster and at the end of an emergency declaration or within 30 days, whichever period is *shorter*.

However, in her veto message for A.8874/S.8063, Gov. Hochul announced an agreement with the legislature to establish new reporting requirements for healthcare employers when they mandate

overtime more than 15 days in a month. The agreement will also require healthcare employers who mandate overtime 45 days or more in a three-month period to provide an estimate to the state of when they will cease to mandate overtime and an explanation of its continued use. This agreement will also establish an enforcement officer to investigate complaints of violations of the new reporting requirements and require employers to make good faith efforts to find alternate staff prior to mandating overtime or face a financial penalty. The veto message did not include a timeline for implementation of the terms of this agreement.

The amendments will take effect 60 days after the governor's execution of A.286/S.1997. Therefore, starting Feb. 28, 2023, hospitals, nursing homes and other covered healthcare employers face penalties for violations, including up to $3,000 for multiple violations, and an additional payment to the affected nurse for each violation. Employers should also prepare for the implementation of reporting requirements once the agreement between Gov. Hochul and the state legislature becomes effective.

Please contact Sanjeeve DeSoyza or any attorney in Bond's labor and employment practice if you have questions about this amendment, as well as other employment law updates.

Special thanks to Associate Trainee Rebecca LaPoint for assisting with researching and drafting this memo.