

MANDATORY OVERTIME: HOW HARD CAN YOU WORK YOUR EMPLOYEES?

By Karen Sutherland and Clay Gatens

LEGAL BACKGROUND

In an economy where employers have been through layoffs, it may be necessary to have the remaining employees work overtime to maintain an appropriate level of customer service because there is no “excess capacity.” In this context, the question arises as to whether there are any limits on overtime work. Some of these limitations are discussed below:

A. Public Works Contracts.

- Eight hours constitutes a days work on any work done for the state or any county or municipality within the state, with certain conditions. *RCW 49.28.010.*
- Employers who contract or subcontract with the state on certain public work projects are subject to the same eight-hour workday regulations. In cases of extreme emergency, such as danger to life or property, the hours of work may be extended, but employees must receive time and a half compensation for any overtime hours worked. *RCW 49.28.020.* Employers may agree to allow their employees to work ten-hour days, so long as the employees do not work more than four days in any given week. *RCW 49.28.065.*
- Employers who violate these provisions face misdemeanor charges which can include a fine up to \$200, up to 90 days imprisonment and cancellation of the contract. *RCW 49.28.030; RCW 49.28.060.*

B. Nursing.

The state legislature has recently passed new regulations prohibiting employers from requiring nurses to work overtime. Specifically, Senate Bill 6675 provides that:

- Health care facility employers may not require their employees to work overtime. Any attempts to compel or force an employee to work overtime, or any such requirements contained in a contract or agreement, will be held void. *SB 6675 § 3(1).*
- The acceptance of overtime is strictly voluntary and the refusal to work overtime is not grounds for discrimination, dismissal, discharge, or any other penalty. *SB 6675 § 3(2).*
- These restrictions will not apply to overtime work that occurs due to unforeseeable emergent circumstances. However, employers must first document that they have used reasonable efforts to obtain staffing. Reasonable efforts are not considered to have been taken when the overtime work is used to fill vacancies resulting from chronic staff shortages. *SB 6675 § 3(3).*
- Penalties for violation include of up to \$1000 per infraction up to three infractions. If there are four or more violations, the employer is subject to a two thousand five hundred dollar fine for the fourth infraction and a five thousand dollar fine for each infraction thereafter. Complaints will be investigated by the Department of Labor and Industries. *SB 6675 § 4.*

C. Minors.

As most employers who employ minors are aware, there are special regulations that apply to the employment of minors. Some noteworthy restrictions that apply to most employers are as follows:

- During the school year, minors under age 16 may work a maximum of three hours per day on any school day preceding another school day or otherwise a maximum of eight hours per day; a maximum of six days per week; and a maximum of sixteen hours per week; except that no minors of this age shall work in house-to-house sales without a variance issued by the department of Labor and Industries.
- Sixteen- and seventeen-year-old minors may work a maximum of four hours per day on any school day preceding another school day or otherwise a maximum of eight hours per day; a maximum of six days per week; and a maximum of twenty hours per week.
- Minors under the age of sixteen can work no earlier than 7:00 a.m.; no later than 7:00 p.m. on any day preceding a school day; no later than 9:00 p.m. on Fridays, Saturdays, and the day preceding a school holiday or vacation, provided that minors employed past 8:00 p.m. in service occupations shall be supervised by a responsible adult employee who is on the premises at all times; and not during school hours.
- Sixteen- and seventeen-year-old minors can work no earlier than 7:00 a.m.; no later than 10:00 p.m. on any day preceding a school day; no later than 12:00 a.m. on Fridays, Saturdays, and the day preceding a school holiday or vacation, provided that minors employed past 8:00 p.m. in service occupations shall be supervised by a responsible adult employee who is on the premises at all times; and not during school hours, unless the minor has been excused from school attendance by the minor's school district superintendent or her or his authorized agent.
- During school vacations, minors under the age of sixteen may work a maximum of eight hours per day; a maximum of six days per week; and a maximum of forty hours per week; except that no minors of this age shall work in house-to-house sales without a variance issued by the Department of Labor & Industries.
- During school vacations, sixteen- and seventeen-year-old minors may work a maximum of eight hours per day; a maximum of six days per week; and a maximum of forty-eight hours per week.
- During school vacations, minors under the age of sixteen shall work no earlier than 7:00 a.m.; and no later than 9:00 p.m. provided that minors employed past 8:00 p.m. in service occupations shall be supervised by a responsible adult employee who is on the premises at all times.
- During school vacations, sixteen- and seventeen-year-old minors shall work no earlier than 5:00 a.m.; and no later than 12:00 a.m. provided that minors employed past 8:00 p.m. in service occupations shall be supervised by a responsible adult employee who is on the

premises at all times, and except no later than 9:00 p.m. for minors employed in house-to-house sales.

- Sixteen- and seventeen-year-old minors who have been issued a certificate of educational competence pursuant to RCW 28A.305.190, are enrolled in a bona fide college program, are named on a valid certificate of marriage, or are shown as the parent on a valid certificate of birth may work as would be permitted during school vacations.

D. Miscellaneous Restrictions on Work Hours.

In addition to the regulations mentioned above, there are a number of federal and state overtime regulations which apply to specific types of services and professions. For example:

- Federal Aviation Administration (FAA) regulations restrict the number of hours that can be worked by pilots. *See 14 C.F.R. § 135.269.*
- Except during emergencies, it is unlawful for an employer to allow any employee to operate on any waterfront property any power driven mechanical equipment which is used for loading and unloading for a period of longer than twelve and one-half hours at any one time without giving the employee an interval of eight hours rest. *RCW 49.28.100.*
- In Washington, domestic household employees may not be employed by a person for a period of longer than sixty hours in any one week, except for emergencies. Employed time includes any hours during which the employee is subject to the call of the employer or otherwise not free to follow his or her inclinations. *RCW 49.28.080 & RCW 49.28.082.*
- Pursuant to WAC 296B-126-090, any employee who feels the number of hours or other matters relating to overtime employment are detrimental to the employee's health, safety, or welfare may request the department of labor and industries to investigate the employer.

PRACTICAL GUIDANCE

- If you employ any of the types of workers covered by the above laws, plan your schedules carefully in order to avoid unwitting violations.
- Be sure that everyone involved in employee scheduling is aware of the law.

The above suggestions are broad, general comments only. Individual situations require individual analysis. For more information, contact Karen Sutherland at 206-447-7000.