

**STATE OF NEW JERSEY  
MANDATORY OVERTIME  
RESTRICTIONS FOR  
HEALTH CARE FACILITIES**



**New Jersey Department of Labor and Workforce Development**

Division of Wage and Hour Compliance

PO Box 389

Trenton, New Jersey 08625-0389

[www.nj.gov/labor](http://www.nj.gov/labor)

March 2009

## Notes

Effective July 1, 2004, the formal name of the Department has changed to the “Department of Labor and Workforce Development.” All references to the “Department of Labor and Industry,” the “Department of Labor,” the “Commissioner of Labor and Industry,” or the “Commissioner of Labor,” should be understood to mean “Department of Labor and Workforce Development” and “Commissioner of Labor and Workforce Development,” respectively.

For additional information about mandatory overtime for health care workers, visit the Department of Labor and Workforce Development’s web site at [www.nj.gov/labor](http://www.nj.gov/labor) and click on Wage & Hour.

This booklet is for ready reference only. For updated official information, consult the New Jersey Statutes Annotated and the New Jersey Administrative Code.

## **FOREWARD**

In January 2002 the State of New Jersey enacted legislation prohibiting mandatory overtime for direct patient caregivers in limited special circumstances. The law applies to hourly workers involved in direct patient care activities (not including physicians) who are employed by a health care facility. The statute was effective January 2003 for acute care hospitals and July 2003 for long-term care facilities and all other health care facilities.

The regulations that implement the law were prepared by the Department of Health and Senior Services and adopted on February 17, 2004. The Division of Wage and Hour Compliance in the New Jersey Department of Labor and Workforce Development is responsible for enforcing the provisions of the law and regulations.

This booklet provides a copy of the law and regulations regarding mandatory overtime restrictions for health care facilities, samples of relevant forms, and a series of frequently asked questions.

For additional information about mandatory overtime restrictions, please visit the Department of Labor and Workforce Development's web site at [www.nj.gov/labor](http://www.nj.gov/labor) and click on Wage & Hour.

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**TITLE 34 - LABOR AND WORKMEN'S COMPENSATION**

**CHAPTER 11 - WAGES**

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**34:11-56a31. Establishment of maximum work week for certain health care facility employees**

It is declared to be the public policy of this State to establish a maximum work week for certain hourly wage health care facility employees, beyond which the employees cannot be required to perform overtime work, in order to safeguard their health, efficiency, and general well-being as well as the health and general well-being of the persons to whom these employees provide services.

**34:11-56a32. Definitions relative to work hours for certain health care facility employees**

As used in this act:

"Employee" means an individual employed by a health care facility who is involved in direct patient care activities or clinical services and who receives an hourly wage, but shall not include a physician.

"Employer" means an individual, partnership, association, corporation or person or group of persons acting directly or indirectly in the interest of a health care facility.

"Health care facility" means a health care facility licensed by the Department of Health and Senior Services pursuant to P.L.1971, c.136 (C.26:2H-1 et seq.), a State or county psychiatric hospital, a State developmental center, or a health care service firm registered by the Division of

Consumer Affairs in the Department of Law and Public Safety pursuant to P.L.1960, c.39 (C.56:8-1 et seq.).

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

"Reasonable efforts" means that the employer shall: a. seek persons who volunteer to work extra time from all available qualified staff who are working at the time of the unforeseeable emergent circumstance; b. contact all qualified employees who have made themselves available to work extra time; c. seek the use of per diem staff; and d. seek personnel from a contracted temporary agency when such staff is permitted by law or regulation.

"Unforeseeable emergent circumstance" means an unpredictable or unavoidable occurrence at unscheduled intervals relating to health care delivery that requires immediate action.

**34:11-56a33. Excessive work shift contrary to public policy**

The requirement that an employee of a health care facility accept work in excess of an agreed to, predetermined and regularly scheduled daily work shift, not to exceed 40 hours per week, except in the case of an unforeseeable emergent circumstance when the overtime is required only as a last resort and is not used to fill vacancies resulting from chronic short staffing and the employer has exhausted reasonable efforts to obtain staffing, is declared to be contrary to public policy and any such requirement contained in any contract, agreement or understanding executed or renewed after the effective date of this act shall be void.

**34:11-56a34. Health care facility employee work shift determined; exceptions voluntary**

(a) Notwithstanding any provision of law to the contrary, no health care facility shall require an employee to accept work in excess of an agreed to, predetermined and regularly scheduled daily work shift, not to exceed 40 hours per week.

(b) The acceptance by any employee of such work in excess of an agreed to, predetermined and regularly scheduled daily work shift, not to exceed 40 hours per week, shall be strictly voluntary and the refusal of any employee to accept such overtime work shall not be grounds for discrimination, dismissal, discharge or any other penalty or employment decision adverse to the employee.

(c) The provisions of this section shall not apply in the case of an unforeseeable emergent circumstance when: (1) the overtime is required only as a last resort and is not used to fill vacancies resulting from chronic short staffing, and (2) the employer has exhausted reasonable efforts to obtain staffing. In the event of such an unforeseeable emergent circumstance, the employer shall provide the employee with necessary time, up to a maximum of one hour, to arrange for the care of the employee's minor children or elderly or disabled family members.

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

(d) In the event that an employer requires an employee to work overtime pursuant to subsection c. of this section, the employer shall document in writing the reasonable efforts it has exhausted. The documentation shall be made available for review by the Department of Health and Senior Services and the Department of Labor.

**34:11-56a35.      Violations, sanctions**

An employer who violates the provisions of this act shall be subject to the sanctions provided by law for violations of the "New Jersey State Wage and Hour Law," P.L.1966, c.113 (C.34:11-56a et seq.).

**34:11-56a36.      Construction, applicability of act**

(a) The provisions of this act shall not be construed to impair or negate any employer-employee collective bargaining agreement or any other employer-employee contract in effect on the effective date of this act.

(b) The provisions of this act shall not apply to employees of assisted living facilities licensed by the Department of Health and Senior Services who are provided with room and board as a benefit of their employment and reside in the facility on a full-time basis.

(c) The provisions of this act shall not apply to on-call time, but nothing in this act shall be construed to permit an employer to use on-call time as a substitute for mandatory overtime.

**34:11-56a37.      Collection of data relative to mandatory overtime prohibition, report**

The Departments of Health and Senior Services, Human Services, and Law and Public Safety shall each collect data from all health care facilities which the respective department licenses, operates or regulates, as to the potential impact of the mandatory overtime prohibition on employee availability and other considerations, and shall jointly report their findings to the Senate and General Assembly Health Committees within 18 months of the date of enactment of this act.

**34:11-56a38.      Rules, regulations**

The Commissioner of Health and Senior Services, in consultation with the Attorney General and the Commissioners of Human Services and Labor, shall adopt rules and regulations, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), within six months of the date of enactment of this act, to carry out the purposes of this act.



**TITLE 8 - DEPARTMENT OF HEALTH AND SENIOR SERVICES**

**CHAPTER 43E - GENERAL LICENSURE PROCEDURES AND ENFORCEMENT  
OF LICENSURE REGULATIONS**

**SUBCHAPTER 8. MANDATORY OVERTIME**

**N.J.A.C. 8:43E-8.1 et seq.**

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**8:43E-8.1 Mandatory overtime; scope and general purpose**

The procedures set forth in this subchapter apply to all health care facilities licensed in accordance with N.J.S.A. 26:2H-1 et seq., including a State or county psychiatric hospital, a State developmental center, or a health care service firm registered by the Division of Consumer Affairs in the Department of Law and Public Safety pursuant to N.J.S.A. 56:8-1.1 et seq. The rules set forth the standards and procedures governing the use by health care facilities of required overtime by hourly wage employees involved in direct patient care activities or clinical services in health care facilities.

**8:43E-8.2 Applicability**

(a) The rules in this subchapter do not apply to the following:

1. Physicians;
2. Volunteers;

3. Employees who volunteer to work overtime;
4. Employees of assisted living facilities that are licensed in accordance with N.J.A.C. 8:36 and who receive room and board as a benefit of employment and reside at the facility on a full-time basis;
5. Employees who assume on-call duty;
6. Employees participating in a surgical or therapeutic interventional procedure that is in progress, when it would be detrimental to the patient if the employee left. However, in the case of elective procedures, the rules do apply if the procedure was scheduled such that the length of time ordinarily required to complete the procedure would exceed the end of the employee's scheduled shift; and
7. Employees not involved in direct patient care activities or clinical services.

### **8:43E-8.3 Definitions**

The following words and terms, as used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

"Chronic short staffing" means a situation characterized by long standing vacancies in that portion of the facility's master staffing plan applicable to the work unit of an employee who files a complaint where such vacancies are the result of open positions that continually remain unfilled over a period of 90 days or more despite active recruitment efforts.

"Commissioner" means the Commissioner of Health and Senior Services.

"Department" means the New Jersey Department of Health and Senior Services.

"Direct patient care activities" or "clinical services" means activities/services in which an employee provides direct service to patient/residents in a clinical setting, including the emergency department, inpatient bedside, operating room, other clinical specialty treatment area, or, in the case of a patient served by a home health care agency or health service firm, the individual's home.

"Employee" means an individual employed by a health care facility who is involved in direct patient care activities or clinical services and receives an hourly wage, but shall not include a physician.

"Employer" means an individual, partnership, association, corporation or person or group of persons acting directly or indirectly in the interest of a health care facility.

"Health care facility" means a health care facility licensed by the Department of Health and Senior Services pursuant to P.L. 1971, c.136 (N.J.S.A. 26:2H-1 et seq.), a State or county psychiatric hospital, a State developmental center, or a health care service firm registered by the

Division of Consumer Affairs in the Department of Law and Public Safety pursuant to P.L. 1960, c.39 (N.J.S.A. 56:8-1 et seq.).

"Licenses" means the action taken by a State agency to license, certify, or register a health care facility subject to the jurisdiction of that State agency.

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

"Reasonable efforts" means that the employer shall:

1. Seek persons who volunteer to work extra time from all available qualified staff who are working at the time of the unforeseeable emergent circumstance;
2. Contact all qualified employees who have made themselves available to work extra time;
3. Seek the use of qualified per diem staff; and
4. Seek qualified personnel from a contracted temporary agency when such staff is permitted by law, regulation or applicable collective bargaining agreements.

"Unforeseeable emergent circumstance" means an unpredictable or unavoidable occurrence at unscheduled intervals relating to health care delivery that requires immediate action.

#### **8:43E-8.4 Purpose**

The rules in this subchapter are intended to promote the health, safety, and welfare of patients, residents and clients of health care facilities as well as of certain hourly wage employees of those facilities through establishing rules implementing the statutory limitations on health care facilities' authority to require certain hourly wage employees, involved in direct patient care activities or clinical services, to work overtime.

#### **8:43E-8.5 Overtime procedures**

(a) Except as provided for in (b) below, an employer shall not require an employee involved in direct patient care activities or clinical services to work in excess of an agreed to, predetermined and regularly scheduled daily work shift, not to exceed 40 hours per week. The acceptance by any employee of work in excess of this shall be strictly voluntary. The refusal of an employee to accept such overtime work shall not be grounds for discrimination, dismissal, discharge, or any other penalty or employment decision adverse to the employee.

(b) The requirements of (a) above shall not apply in the case of an unforeseeable emergent circumstance when:

1. The overtime is required only as a last resort, and is not used to fill vacancies resulting from chronic short staffing; and

2. The employer has exhausted reasonable efforts to obtain staffing. However, exhaustion of reasonable efforts shall not be required in the event of any declared national, State or municipal emergency or a disaster or other catastrophic event which substantially affects or increases the need for health care services or causes the facility to activate its emergency or disaster plan.

(c) In the event that an employer requires an employee to work overtime pursuant to (b) above, the employer shall provide the employee with necessary time, up to a maximum of one hour, which may be taken on or off the facility's premises, to arrange for the care of the employee's minor children, or elderly or disabled family members.

(d) On-call time shall not be construed to permit an employer to use on-call time as a substitute for mandatory overtime.

#### **8:43E-8.6 Records; dissemination of information**

(a) An employer shall establish a system for keeping records of circumstances where employees are required to work in excess of an agreed to, predetermined and regularly scheduled daily work shift, or in excess of 40 hours per week. The records shall include, but not be limited to:

1. The employee's name and job title;
2. The name of the employee's work area or unit;
3. The date the overtime was worked, including start time;
4. The number of hours of overtime mandated;
5. The employee's daily work schedule for any week in which the employee is required to work excess time;
6. The reason why the overtime was necessary;
7. A description of the reasonable efforts that were exhausted prior to requiring overtime. This shall include:
  - i. The names of employees contacted to work voluntary overtime;
  - ii. A description of efforts to secure per diem staff; and
  - iii. A list of the temporary agencies contacted; and
8. The signature of individual authorizing the required mandatory overtime.

(b) An employer shall provide the employee with a copy of the documentation in accordance with the requirements set forth in (a) above upon requiring that the employee work overtime, except that the total number, rather than the names, of employees contacted in accordance with (a)7i above shall be provided.

(c) Records as set forth in (a) above shall be kept a period of two years.

(d) A facility shall post in a conspicuous place a notice prepared by the New Jersey Department of Labor concerning New Jersey Mandatory Overtime Restrictions for Health Care Facilities (N.J.S.A. 34:11-56a et seq.)

### **8:43E-8.7 Enforcement and administrative penalties**

(a) If the Commissioner of Labor determines that a facility has violated provisions of this subchapter, the Commissioner of Labor may issue sanctions in accordance with the wage and hour regulations contained at N.J.A.C. 12:56.

(b) In cases where the State agency that licenses the facility and/or Department of Labor requests additional information from a facility concerning mandatory overtime usage, the facility shall comply with this request within 10 working days. The State agency that requested the information from the facility may, at its discretion, grant an extension to this time frame if the facility can demonstrate good cause. Failure to provide these records shall result in the issuance of administrative penalties in accordance with N.J.A.C. 12:56-1.2 and 8:43E-3.4(a)13.

(c) If the State agency that licenses a facility subject to this chapter determines through a survey or complaint investigation that the facility exhibits a pattern or practice of noncompliance with N.J.A.C. 8:43E-8.5, that State agency shall notify the Department of Labor of the violation. The Department of Labor may also share with State agencies that license facilities subject to this chapter any information it develops on Statewide and facility-specific trends, such as number of mandatory overtime complaints filed; the number of complaints found to be valid; the number of enforcement actions appealed; and the number of enforcement actions upheld.

(d) In the event a facility licensed by the Department fails to develop and implement the required recordkeeping in accordance with N.J.A.C. 8:43E-8.6 and the required policies and procedures in accordance with this section, the Department shall take enforcement action in accordance with the provisions of N.J.A.C. 8:43E-3.4(a)13.

(e) Nothing in this subchapter shall be construed to relieve a facility of its obligation to comply with State licensure standards pertaining to minimum employee staffing levels.

### **8:43E-8.8 Policies and procedures**

(a) A facility shall develop, revise as necessary and implement policies and procedures for the purpose of training and educating staff on mandatory overtime. The policies and procedures shall include mandatory educational programs that address at least the following:

1. The conditions under which an employer can require mandatory overtime;
2. Overtime procedures;
3. Employee rights; and
4. Complaint procedures.

(b) A facility shall establish a staffing plan designed to facilitate compliance with the requirements of this subchapter.

1. The staffing plan shall include procedures to provide for replacement staff in the event of sickness, vacations, vacancies and other employee absences.

(c) Upon request, the staffing plan and all related policies and procedures shall be made available to the Department of Labor and/or the State agency that licenses the facility.

#### **8:43E-8.9 Discharge or discrimination against an employee making a complaint**

An employer shall not discharge or in any other manner discriminate against an employee because such employee has made any complaint to his or her employer, including the employer's representative; to the Commissioner of Labor; or to the State agency that licenses the facility where the employee works that the employee has been required to work overtime in contravention to the provisions of this chapter.

#### **8:43E-8.10 Complaint system**

(a) An employee covered by this subchapter shall have a right to file a complaint up to two years following the date of the assigned mandatory overtime if he or she believes the overtime was not in response to an unforeseen emergent circumstance, and/or required reasonable efforts were not exhausted, and/or he or she was not provided the allowed time to make arrangements for the care of family members. All such complaints shall be submitted to:

Labor Standards and Safety Enforcement Directorate  
Division of Wage and Hour Compliance of the  
Department of Labor  
PO Box 389  
Trenton, New Jersey 08625-0389

1. If requested, records of such reports shall be made available upon request to the Department or to the Department of Law and Public Safety or to the Department of Human Services.

#### **8:43E-8.11 Protection of the right to collective bargaining**

Nothing in this subchapter shall be construed to impair or negate any employer-employee collective bargaining agreement or any other employer/employee contract in effect as of January

1, 2003 for licensed general hospitals and July 1, 2003 for all other facilities subject to these rules as set forth at N.J.A.C. 8:43E-8.1.

**8:43E-8.12                    Data**

A facility shall submit data related to the effects of prohibiting mandatory overtime in accordance with this chapter as well as data required to determine whether chronic staffing shortages exist, as the State agency which licenses the facility shall request from time to time directly from each facility.

## **MANDATORY OVERTIME COMPLAINT FORM – MW-310T →**

**PURPOSE:** To file a complaint regarding mandatory overtime.

**USE:** When an hourly employee of a health care facility is required to work overtime and wants to file a complaint due to the following:

- The overtime was not in response to an unforeseeable emergent circumstance and/or;
- The employer did not exhaust reasonable efforts to obtain staffing and/or;
- The employer did not provide the employee with the allowed time (up to a maximum of one hour) to make care arrangements for the care of minor children and/or elderly or disabled family members.

This form is available at [www.nj.gov/labor](http://www.nj.gov/labor) (click on Wage & Hour and then click on Forms & Publications for workers & employers) or by contacting the Department of Labor and Workforce Development at:

Division of Wage and Hour Compliance  
PO Box 389  
Trenton, NJ 08625-0389

Tel. No. (609) 292-2305  
Fax No. (609) 695-1174

*wage.hour@dol.state.nj.us*

New Jersey Department of Labor and Workforce Development  
 Division of Wage and Hour Compliance  
 PO Box 389  
 Trenton, New Jersey 08625-0389

Tel. No. (609) 292-2305  
 Fax No. (609) 695-1174  
 wage.hour@dol.state.nj.us

Claim Number (for state use only):

Instructions: Complete both sides of this form and answer all questions. Please type or print legibly. Attach any documentation you may have that supports your complaint. Mail, fax, or e-mail all documentation to the address shown above.

*Acceptance of this claim by the Department does not imply that the employer is in violation of any law or regulation on mandatory overtime restrictions for health care facilities.*

**MANDATORY OVERTIME COMPLAINT FORM**

I request the Commissioner of Labor and Workforce Development to investigate the claim indicated by the information supplied in this complaint and advise me of the results of the investigation. Please note that you may attach additional sheets in order to supply the Department with detailed explanations of the questions contained in this form.

<b>1.</b> Name (Last) (First) (Initial)	<b>3.</b> Social Security Number
<b>2.</b> Address	<b>4.</b> Telephone No. ( )
City State Zip Code	<b>5.</b> Daytime Telephone No. or No. Where Message Can Be Left ( )
<b>6.</b> Are you involved in direct patient care activities or clinical services? <input type="checkbox"/> Yes <input type="checkbox"/> No  Briefly describe your job duties:	Occupation and Job Title:
<b>7.</b> Are you an hourly employee? <input type="checkbox"/> Yes <input type="checkbox"/> No If yes, what is your hourly rate of pay? \$ _____ per hour	
<b>8.</b> Name of Employer	
<b>9.</b> Employer Street Address	
City State Zip Code County Telephone No.	
<b>10.</b> Employer Mailing Address (if different than item 9)	
<b>11.</b> Nature of Employer's Business:	

**MANDATORY OVERTIME INFORMATION**

**12.** For each incident for which you had to work mandatory overtime, provide the date, the hours you were originally scheduled to work, and the overtime hours you were required to work.

Date(s)	Original Schedule			Mandatory Overtime		
	Start Time	End Time	Total Hrs.	Start Time	End Time	Total Hrs.
_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____

**13.** Did you volunteer to work overtime or did you agree to be on-call?  Yes  No  
 If yes, please explain (attach additional sheets if necessary):

**14.** Were you participating in a surgical or therapeutic interventional procedure during which it would have been detrimental to the patient if you had left?  Yes  No  
 If yes, please explain (attach additional sheets if necessary):

**REVERSE OF FORM MW-310T →**

<b>15.</b>	Did your employer explain the reason for the mandatory overtime? If yes, what reason was given?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	
<b>16.</b>	Was the overtime required due to an unforeseeable circumstance? If yes, what were the circumstances?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Not Sure
<b>17.</b>	Do you believe the overtime was required due to vacancies resulting from chronic staffing shortages? If yes, please explain and attach any supporting documentation:	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Not Sure
<b>18.</b>	Was the overtime required due to any declared national, State, or municipal emergency or disaster or other catastrophic event? If yes, please explain:	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Not Sure
<b>19.</b>	Was the overtime required because your employer activated its emergency or disaster plan? If yes, please explain:	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Not Sure
<b>20.</b>	Depending on the reason for the mandatory overtime, your employer may have been required to exhaust reasonable efforts to obtain staffing. Please answer the following questions to the best of your knowledge:			
a.	Did your employer ask for volunteers to work overtime?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Not Sure
b.	Did your employer contact employees who made themselves available to work extra time?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Not Sure
c.	Did your employer contact per diem staff?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Not Sure
d.	Did your employer contact a temporary agency?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Not Sure
e.	Did your employer provide you with any documentation which demonstrates their efforts to obtain staffing? If yes, attach a copy of the documentation to this form.	<input type="checkbox"/> Yes	<input type="checkbox"/> No	
<b>21.</b>	Prior to working the required overtime, did your employer provide you with the necessary time, up to a maximum of one hour, to arrange for the care of your minor children or elderly or disabled family members? <div style="text-align: right;"><input type="checkbox"/> Yes    <input type="checkbox"/> No    <input type="checkbox"/> Not Applicable</div> <b>If no:</b> List the individuals (include ages of minor children) who required care arrangements:  How much time did your employer give you to make care arrangements?  How much time did you need to make the arrangements?			
<b>22.</b>	Please use this space to provide any additional information you may have regarding this complaint. Attach any documentation you may have that supports your complaint.			
<b>23.</b>	Under the provisions of N.J.S.A. 47:1A-1, et seq., Chapter 404, P.L. 2001, commonly known as the Open Public Records Act, all government records are subject to public access unless exempt from such access by provision of the Act or other statutory mandate. Therefore, I hereby understand the New Jersey Department of Labor and Workforce Development, Division of Wage and Hour Compliance, may release my identity as a result of its investigation under legally appropriate standards.			
Signature _____		Date _____		

## **NOTICE TO EMPLOYER OF MANDATORY OVERTIME COMPLAINT →**

**PURPOSE:** To notify an employer that an employee has filed a mandatory overtime complaint.

**USE:** This notice will be mailed to an employer after an employee files a mandatory overtime complaint. An employer questionnaire and a copy of the employee's original complaint will also be mailed with this notice.



## State of New Jersey

DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT  
PO BOX 389  
TRENTON, NEW JERSEY 08625-0389

January 5, 2009

The Fletcher Institute  
456 Bibbit Road  
Louis NJ 01234

Re: Mildred Ratched  
Mandatory Overtime Complaint

The Fletcher Institute :

The State of New Jersey has enacted legislation that stipulates the conditions under which health care facilities may require certain hourly employees to work overtime. The purpose of the law is to promote the health and safety of patients, residents, and clients of health care facilities as well as of certain hourly wage employees of those facilities.

The above employee has filed a complaint with the Division of Wage and Hour Compliance alleging that your firm is in violation of N.J.S.A. 34:11-56a31, et seq. and N.J.A.C. 8:43E-8.1, et seq. for requiring the employee to work in excess of an agreed to, predetermined and regularly scheduled daily work shift. A copy of the employee's mandatory overtime complaint is enclosed for your review.

In order for the Division to make a decision in this matter, please answer the questions on the enclosed "Employer Response to Mandatory Overtime Complaint," attach the requested documentation, and submit by mail, fax, or e-mail to: New Jersey Department of Labor and Workforce Development, Division of Wage and Hour Compliance, PO Box 389, Trenton, NJ 08625-0389; Fax (609) 695-1174; [wage.hour@dol.state.nj.us](mailto:wage.hour@dol.state.nj.us).

If you do not respond to this request by January 20, 2009, it may be determined that you are in violation of the law and subject to monetary penalties in accordance with N.J.A.C. 12:56-1, et seq.

Sincerely,

Section Chief  
(609) 292-2305

Claim # 279630  
Employer # 667714

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*DIVISION OF WAGE AND HOUR COMPLIANCE  
(609) 292-2337 \* FAX (609) 695-1174 \* [www.nj.gov/labor](http://www.nj.gov/labor)*

## **EMPLOYER QUESTIONNAIRE – MW-378 →**

**PURPOSE:** To obtain information from an employer regarding the mandated overtime.

**USE:** This questionnaire will be mailed to an employer after an employee files a mandatory overtime complaint. The employer must answer all questions and attach copies of requested documentation.

The employer has 15 days to provide the requested information. If the employer does not respond, it may be determined that the employer is in violation of the law and subject to monetary penalties.

New Jersey Department of Labor and Workforce Development  
 Division of Wage and Hour Compliance Tel. (609) 292-2305  
 PO Box 389 Fax (609) 695-1174  
 Trenton, NJ 08625-0389 wage.hour@dol.state.nj.us

Claim No. 279630  
 Employer No. 667714

**EMPLOYER RESPONSE TO MANDATORY OVERTIME COMPLAINT**

The Fletcher Institute  
 456 Bibbit Road  
 Louis, NJ 01234

Re: Mildred Ratched

**Instructions:** Answer all questions and attach copies of requested documentation. Mail, fax, or e-mail your documents to the address shown above. The date(s) of the alleged violation are listed on the copy of the employee's mandatory overtime complaint.

If you do not respond to this request by January 20, 2009, it may be determined that your company is in violation of the mandatory overtime restrictions for health care facilities in accordance with N.J.S.A. 34:11-56a31 et seq. and N.J.A.C. 8:43E-8.1 et seq. and subject to monetary penalties in accordance with N.J.A.C. 12:56. Please note that you may attach additional sheets in order to supply the Department with detailed explanations of the questions contained in this form.

1. a. Is your facility a State or county psychiatric hospital or a State developmental center?  Yes  No\*  
 If yes, please explain: \_\_\_\_\_
- b. Is your health care facility licensed by the Department of Health and Senior Services?  Yes  No\*  
 If yes, provide license no.: \_\_\_\_\_
- c. Is your health care service firm registered by the Division of Consumer Affairs in the Department of Law and Public Safety?  Yes  No\*  
 If yes, provide registration no.: \_\_\_\_\_

\* If you answer "No" to all three questions, your company may not be covered under the law for mandatory overtime restrictions for health care facilities. Please go directly to item 14.

2. Employee's job title: \_\_\_\_\_ Work area or unit: \_\_\_\_\_  
 Is the employee involved in direct patient care activities or clinical services?  Yes  No  
 Briefly describe employee's job responsibilities: \_\_\_\_\_

3. Is the employee an hourly employee?  Yes  No  
 If yes, hourly rate of pay: \$ \_\_\_\_\_ per hour. If no, please explain: \_\_\_\_\_

4. Did the employee volunteer to work overtime or had the employee assumed on-call duty?  Yes  No  
 If yes, please explain: \_\_\_\_\_

5. At the time the overtime was mandated, was the employee participating in a surgical or therapeutic interventional procedure during which it would have been detrimental to the patient if the employee had left?  Yes  No  
 If yes, please explain: \_\_\_\_\_

6. For each date(s) listed on the complaint form, provide the start and end times of the **mandatory overtime** and the total hours of **overtime mandated**.

Date	Start Time	End Time	Total Hours	Date	Start Time	End Time	Total Hours
_____	_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____	_____

**Attach copies** of the employee's daily work schedule for any week in which the employee was required to work overtime.

**REVERSE OF FORM MW-378 →**

The Fletcher Institute	Claim No. 279630 Employer No. 667714
<b>7.</b> Please explain why overtime was mandated on the date(s) listed on the complaint form. Attach copies of any documentation that substantiates your reason for mandating the overtime.	
<b>8.</b> Was the overtime mandated due to an unforeseeable emergent circumstance? <span style="float: right;">___ Yes ___ No</span>  <i>Note: "Unforeseeable emergent circumstance" means an unpredictable or unavoidable occurrence at unscheduled intervals relating to health care delivery that requires immediate action.</i> <span style="float: right;">MW-31OT (R-5-07)</span>  If yes, fully describe the circumstance and attach documentation:	
<b>9.</b> Was the overtime mandated due to any declared national, State or municipal emergency or a disaster or other catastrophic event which substantially affected or increased the need for health care services or caused your facility to activate its emergency or disaster plan? <span style="float: right;">___ Yes ___ No</span>  If yes, please explain and attach documentation:	
<b>10.</b> Depending on the reason for the mandatory overtime, you may have been required to exhaust reasonable efforts to obtain staffing. Please answer the following questions: <ul style="list-style-type: none"> <li>a. Did you ask for volunteers to work the overtime? <span style="float: right;">___ Yes* ___ No</span></li> <li>b. Did you contact employees who had made themselves available to work extra time? <span style="float: right;">___ Yes* ___ No</span></li> <li>c. Did you contact any per diem staff? <span style="float: right;">___ Yes* ___ No</span></li> <li>d. Did you seek personnel from a contracted temporary agency when such staff is permitted by law or regulation? <span style="float: right;">___ Yes* ___ No</span></li> </ul> <p>* If you answer yes, attach documentation describing your efforts and list the names of volunteers, employees, per diem staff, and/or temporary agencies that you contacted.</p>	
<b>11.</b> Did you provide the employee with the necessary time, up to a maximum of one hour, to arrange for the care of minor children or elderly or disabled family members? <span style="float: right;">___ Yes ___ No ___ Not Applicable</span>  If no, please explain and provide the amount of time (if any) given to the employee to make care arrangements:	
<b>12.</b> Did you provide documentation to the employee that you had exhausted reasonable efforts to obtain staffing? <span style="float: right;">___ Yes ___ No</span>  If yes, please attach a copy of the documentation. If no, please explain:	
<b>13.</b> Provide the name and title of the individual who authorized the required overtime:	
<b>14.</b> I certify that the above information is true and correct.	
Print Name and Title _____	Telephone No. _____
Signature _____	Date _____
E-Mail _____	

**NEW JERSEY MANDATORY OVERTIME RESTRICTIONS  
FOR HEALTH CARE FACILITIES (POSTER) – MW-377 →**

**PURPOSE:** To notify hourly health workers in a health care facility of the mandatory overtime law and their rights under the law.

**USE:** In accordance with N.J.A.C. 8:43E-8.1, et seq., all health care facilities are required to post this notice in a conspicuous place. A “health care facility” is defined as a health care facility licensed by the Department of Health and Senior Services, a State or county psychiatric hospital, a State developmental center, or a health care service firm registered by the Division of Consumer Affairs in the Department of Law and Public Safety.

This poster is available at [www.nj.gov/labor](http://www.nj.gov/labor) (click on Wage & Hour and then click on Forms & Publications for Workers & Employers) or by contacting the Department of Labor and Workforce Development at:

Division of Wage and Hour Compliance  
PO Box 389  
Trenton, NJ 08625-0389

Tel. No. (609) 292-2305  
Fax No. (609) 695-1174

*wage.hour@dol.state.nj.us*

# New Jersey Department of Labor and Workforce Development

To be posted in a conspicuous place

## New Jersey Mandatory Overtime Restrictions for Health Care Facilities

N.J.S.A. 34:11-56a31, et seq.

### Conditions

- A health care facility shall not require an hourly employee who provides direct patient care to work in excess of an agreed to, predetermined and regularly scheduled daily work shift, not to exceed 40 hours per week.

“Direct patient care activities” are activities in which an employee provides direct service to patients in a clinical setting—including the emergency department, in-patient bedside, operating room or other clinical specialty treatment areas.

- Mandatory overtime cannot be used to compensate for “chronic short staffing.”
- An hourly wage employee may agree to work overtime strictly on a voluntary basis or volunteer to be on call.
- An hourly wage employee’s refusal to accept overtime shall not be grounds for retaliatory action, workplace discrimination, dismissal, discharge or any other penalty or adverse employment decision.

### Exemptions

**Overtime may be mandated in the case of unforeseeable, emergent circumstances only as a last resort and where the employer has exhausted reasonable efforts to obtain staffing as follows:**

- Seeks individuals to volunteer to work extra time from all available, qualified staff who are working at the time of the unforeseeable, emergent circumstance;
- Contacts qualified employees who have made themselves available to work extra time;
- Seeks and makes use of per diem staff; and
- Seeks personnel from a contracted temporary agency when such staffing is permitted by law, regulation, or an applicable collective bargaining agreement.

**Exhaustion of reasonable efforts is not required as follows:**

- In the event of any declared, national, state or municipal emergency including, but not limited to, an act of terrorism, a disease outbreak, adverse weather conditions or natural disaster;
- When a health care facility disaster plan is activated; or
- In the event of any unforeseen disaster, natural or man-made, or other catastrophic event which substantially affects or increases the need for health care services.

**The prohibition against mandatory overtime does not apply** when an employee is participating in a procedure in progress and it would be detrimental to the patient’s health if the employee was not in attendance. However, this exemption does not apply for elective procedures scheduled such that the length of time ordinarily required to complete the procedure would exceed the employee’s scheduled end of shift.

### Penalties

- Any employer who violates any provisions of this Act shall be guilty of a disorderly persons offense and, upon conviction, shall be punished by a fine of not less than \$100 nor more than \$1,000.
- As an alternative to, or in addition to, any other sanctions provided by law for violations, the Commissioner of Labor is authorized to assess and collect administrative penalties, up to a maximum of \$250 for a first violation and up to a maximum of \$500 for each subsequent violation.
- Each incident during which any violation of this provision occurs shall constitute a separate and distinct offense.

#### Enforced by:

New Jersey Department of  
Labor and Workforce Development  
Division of Wage and Hour Compliance  
PO Box 389  
Trenton, New Jersey 08625-0389



MW-377 (R-9-06)

Additional copies of this poster or any other required posters may be obtained by contacting the New Jersey Department of Labor and Workforce Development, Office of Constituent Relations, PO Box 110, Trenton, New Jersey 08625-0110, (609) 777-3200.

New Jersey Department of Labor and Workforce Development is an equal opportunity employer with equal opportunity programs. Auxiliary aids and services are available upon request to individuals with disabilities.

If you need this document in Braille or large print, call (609) 292-2305. TTY users can contact this department through New Jersey Relay: 7-1-1.



## FREQUENTLY ASKED QUESTIONS

**Q.** Is there a law that protects health care workers from being forced to work overtime?

**A.** Yes. The New Jersey Mandatory Overtime Restrictions for Health Care Facilities stipulates the conditions under which health care facilities may require certain hourly employees to work overtime. The law is contained in N.J.S.A. 34:11-56a31 et seq. The regulations are contained in N.J.A.C. 8:43E-8.1 et seq.

**Q.** Who is covered under the law for mandatory overtime restrictions?

**A.** Hourly workers who are involved in direct patient care activities or clinical services and are employed by a health care facility (*see below for definition of health care facility*). This may include nurses, nursing assistants, certified homemakers, and home health aides, but not doctors.

A list of employees that are not covered is contained in N.J.A.C. 8:43E-8-2 (see page 5).

**Q.** What is a "health care facility?"

**A.** A "health care facility" means a health care facility licensed by the Department of Health and Senior Services (DHSS) a State or county psychiatric hospital, a State developmental center, or a health care service firm registered by the Division of Consumer Affairs in the Department of Law and Public Safety.

For a list of licensed acute care and long term facilities, visit the DHSS's web site at: <http://www.state.nj.us/health/healthfacilities/search/ac.shtml>

Examples of a health care facility include hospitals, nursing homes, outpatient clinics, comprehensive rehabilitation hospitals, residential health care facilities, residential drug and alcohol treatment facilities, adult day health care facilities, assisted living residences, comprehensive personal care homes, home health care agencies, hospice care agencies, maternal and child health consortia, and health care service firms.

**Q.** Are health care facilities required to post a notice regarding the mandatory overtime restrictions?

**A.** Yes. Health care facilities are required to post the notice “New Jersey Mandatory Overtime Restrictions for Health Care Facilities” (MW-377) in a conspicuous place.

The poster is available at [www.nj.gov/labor](http://www.nj.gov/labor) (click on Wage & Hour and then click on Forms & Publications for workers & employers) or by contacting the Division of Wage and Hour Compliance at (609) 292-2305.

**Q.** Can an employer fire an employee who refuses to work overtime?

**A.** If the employee is a “covered” health care worker under the law for Mandatory Overtime Restrictions for Health Care Facilities, the employer is prohibited from discriminating or discharging an employee who refuses to work overtime.

**Q.** When can a health care facility require certain hourly employees to work overtime?

**A.** In order to comply with the provisions of the law, a health care facility must meet the following three requirements:

- The required overtime must be in response to an unforeseeable emergent circumstance and only as a last resort and not used to fill vacancies resulting from chronic short staffing.

*An “unforeseeable emergent circumstance” means an event that is unpredictable and non-recurring relating to health care delivery that requires immediate action.*

*“Chronic short staffing” means a situation characterized by long standing vacancies that remain unfilled over a period of 90 days or more.*

- The employer has exhausted reasonable efforts to obtain staffing. This means that the employer shall:
  - seek volunteers to work overtime
  - contact “on-call” employees
  - seek the use of per diem staff
  - seek personnel from a contracted temporary agency when such staff is permitted by law or regulation.

*Note: This requirement shall not apply in the event of any declared national, State, or municipal emergency, or a disaster or other catastrophic event which substantially affects or increases the need*

*for health care services or causes the facility to activate its emergency or disaster plan.*

- The employer shall provide the employee with necessary time, up to a maximum of one hour, to arrange for the care of the employee's minor children or elderly or disabled family members.

**Q.** What can I do if I was required to work overtime but I do not believe my employer met the requirements of the law?

**A.** If you believe that your employer did not meet the requirements of the law, you can file a Mandatory Overtime Complaint (Form MW-31OT). Submit the completed form by mail, fax, or e-mail to the address shown at the top of the form.

The complaint form is available at [www.nj.gov/labor](http://www.nj.gov/labor) (click on Wage & Hour and then click on Forms & Publications for workers & employers) or by contacting the Division of Wage and Hour Compliance at (609) 292-2305.

**Q.** What happens after I file a Mandatory Overtime Complaint?

**A.** After the Division of Wage and Hour Compliance receives your complaint, you will be sent a letter acknowledging its receipt. Your complaint will be reviewed to ensure that the type of work you do and the employer you work for are covered under the law for Mandatory Overtime Restrictions. Your employer will then be notified that a complaint has been filed. Your employer will also be supplied with a copy of your complaint and asked to complete a questionnaire regarding the mandatory overtime.

After your employer's response is received, it will be reviewed and a decision will be made whether the employer met the requirements of the law. You and your employer will be notified of the outcome of the investigation. An employer who is in violation of the law will be subject to monetary penalties in accordance with N.J.A.C. 12:56-1. The person who filed the complaint will not be compensated for any damages collected from the employer.

- Q.** If I file a Mandatory Overtime Complaint, when will I be notified of the outcome?
- A.** Routine complaints will normally take about 90 days to process, but depending on the complexity of the complaint, it may take much longer.

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NEW JERSEY DEPARTMENT OF

LWD

LABOR AND WORKFORCE DEVELOPMENT

[nj.gov/labor](http://nj.gov/labor)

*Working Together to Keep New Jersey Working*