

AMENDED IN SENATE AUGUST 19, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2155**

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**Introduced by Assembly Member Ridley-Thomas**

February 20, 2014

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An act to add Section 19851.2 to the Government Code, relating to state employees.

LEGISLATIVE COUNSEL'S DIGEST

AB 2155, as amended, Ridley-Thomas. Nurses and certified nurse assistants: overtime.

Existing law generally requires the workweek of state employees to be 40 hours, and the workday of state employees to be 8 hours. Under existing law, it is the policy of the state to avoid the necessity for overtime work whenever possible.

This bill ~~would~~ *would, commencing January 1, 2016*, prohibit a nurse, defined as a registered nurse or a licensed vocational nurse, or a certified nursing assistant (CNA), employed by the State of California in a state facility, as defined, from being compelled to work in excess of the regularly scheduled workweek or work shift, except under certain circumstances, including the occurrence of a catastrophic event in a state facility. This bill would prohibit a state facility from discriminating, dismissing, discharging, or making an employment decision adverse to the nurse or CNA for his or her refusal to accept those additional ~~hours~~ *hours, and would specify that a refusal to accept those additional hours does not constitute patient abandonment or neglect, as specified. The bill would require management and supervisors to consider employees in a specified order of priority in order to fulfill the additional staffing needs of a facility.* This bill would enact other related provisions.

*The bill would make a statement of legislative intent with regards to prohibiting mandatory overtime for nurses and CNAs employed by the State of California in a state facility.*

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     *SECTION 1. It is the intent of the Legislature to ensure that*  
2 *there is a process that management and supervisors in a state*  
3 *health care facility are required to follow to avoid prescheduled*  
4 *and on-the-spot mandatory overtime of any nurse or certified*  
5 *nursing assistant (CNA) whose regularly scheduled work shift is*  
6 *complete, and to prevent circumstances where an employee is*  
7 *stopped at the gate of, for example, a Department of Corrections*  
8 *and Rehabilitation and California Correctional Health Care*  
9 *Services facility, and is instructed to return to work at the end of*  
10 *their regularly scheduled work shift. It is the intent of the*  
11 *Legislature to prohibit a state facility that employees nurses or*  
12 *CNAs from using mandatory overtime as a scheduling tool, or as*  
13 *an excuse for fulfilling an operational need that results from a*  
14 *management failure to properly staff those state facilities.*

15     ~~SECTION 1.~~

16     SEC. 2. Section 19851.2 is added to the Government Code, to  
17 read:

18     19851.2. (a) As used in this section:

19     (1) “Nurse” means all classifications of registered nurses  
20 represented by State Bargaining Unit 17, or the Licensed  
21 Vocational Nurse classifications represented by State Bargaining  
22 Unit 20.

23     (2) “CNA” means all Certified Nursing Assistant classifications  
24 represented by State Bargaining Unit 20.

25     (3) “On call or on standby” means alternative staff who are  
26 not currently working on the premises of the facility and who satisfy  
27 either of the following criteria:

28     (A) Are compensated for his or her availability.

29     (B) Has agreed to be available to come to the facility on short  
30 notice, if the need arises.

31     (3)

1 (4) “Facility” means any ~~mental hospital, youth or adult~~  
2 ~~correctional facility, developmental center, veteran’s home, school,~~  
3 ~~or worksite facility that provides clinically related health services~~  
4 *that is operated by the Division of Correctional Health Care*  
5 *Services of the Department of Corrections and Rehabilitation, the*  
6 *Department of Corrections and Rehabilitation, the State*  
7 *Department of State Hospitals, the Department of Veteran Affairs,*  
8 *and the State Department of Developmental Services in which a*  
9 *nurse or CNA works as an employee of the state.*

10 (5) “Management or supervisor” means any person or group  
11 *of persons acting directly or indirectly on behalf of, or in the*  
12 *interest of, the facility, whose duties and responsibilities include*  
13 *facilitating staffing needs.*

14 (6) “Emergency situation” means any of the following:

15 (A) *An unforeseeable declared national, state, or municipal*  
16 *emergency.*

17 (B) *A highly unusual or extraordinary event that is unpredictable*  
18 *or unavoidable and that substantially affects providing needed*  
19 *health care services or increases the need for health care services,*  
20 *which includes any of the following:*

21 (i) *An act of terrorism.*

22 (ii) *A natural disaster.*

23 (iii) *A widespread disease outbreak.*

24 (iv) *A warden, superintendent, or executive director-declared*  
25 *emergency, or severe emergency that necessitates the assistance*  
26 *of an outside agency.*

27 (b) *A facility shall not require a nurse or CNA to work in excess*  
28 *of a regularly scheduled workweek or work shift. A nurse or CNA*  
29 *may volunteer or agree to work hours in addition to his or her*  
30 *regularly scheduled workweek or work shift but the refusal by a*  
31 *nurse or CNA to accept those additional hours shall not be grounds*  
32 *constitute either of the following:*

33 (1) *Grounds for discrimination, dismissal, discharge, or any*  
34 *other penalty or employment decision adverse to the nurse or CNA.*

35 (2) *Patient abandonment or neglect, except under circumstances*  
36 *provided for in the Nursing Practice Act (Chapter 6 (commencing*  
37 *with Section 2700) of Division 2 of the Business and Professions*  
38 *Code).*

39 (c) *In order to avoid the use of mandatory overtime as a*  
40 *scheduling tool, management and supervisors shall consider*

1 employees to fulfill the additional staffing needs of a facility in the  
2 following priority order:

3 (1) First priority shall be given to employees who volunteer or  
4 agree to work hours in addition to his or her regularly scheduled  
5 workweek or work shift.

6 (2) Second priority shall be given to individuals who are  
7 part-time or intermittent employees.

8 (3) Third priority shall be given to employees who are on call  
9 or on standby.

10 (e)

11 (d) This section shall not apply in any of the following  
12 situations:

13 (1) To a nurse or CNA participating in a surgical procedure  
14 ~~until that procedure is completed~~ in which the nurse is actively  
15 engaged and whose continued presence through the completion  
16 of the procedure is needed to ensure the health and safety of the  
17 patient.

18 (2) If a catastrophic event occurs in a facility and both of the  
19 following factors apply:

20 (A) The catastrophic event results in such a large number of  
21 patients in need of immediate medical treatment that the facility  
22 is incapable of providing sufficient nurses or CNAs to attend to  
23 the patients without resorting to mandatory overtime.

24 (B) The catastrophic event is an unanticipated and nonrecurring  
25 event.

26 (3) *If an emergency situation occurs.*

27 (d)

28 (e) Nothing in this section shall be construed to affect the  
29 Nursing Practice Act (Chapter 6 (commencing with Section 2700)  
30 of Division 2 of the Business and Professions Code), the Vocational  
31 Nursing Practice Act (Chapter 6.5 (commencing with Section  
32 2840) of Division 2 of the Business and Professions Code), or a  
33 registered nurse's duty under the standards of competent  
34 performance.

35 (f) *Nothing in this section shall be construed to preclude a  
36 facility from hiring part-time or intermittent employees.*

37 (g) *Nothing in this section shall prevent a facility from providing  
38 employees with more protections against mandatory overtime than  
39 the minimum protections established pursuant to this section.*

40 (i) *This section shall become operative on January 1, 2016.*

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