

**CHAPTER 225. PROHIBITION OF EXCESSIVE OVERTIME IN
HEALTH CARE ACT REGULATIONS**

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Authority

The provisions of this Chapter 225 issued under section 5 of the Prohibition of Excessive Overtime in Health Care Act (43 P. S. § 932.5), unless otherwise noted.

Source

The provisions of this Chapter 225 adopted July 18, 2014, effective July 19, 2014, 44 Pa.B. 4483, unless otherwise noted.

§ 225.1. Purpose and scope.

This chapter implements the complaint and investigation procedures in the act, and the administrative penalties assessment provisions in the act.

§ 225.2. Definitions.

(a) Terms used in this chapter have the same meanings and are defined in the same manner as the act.

(b) In addition to the provisions of subsection (a), the following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

Act—The Prohibition of Excessive Overtime in Health Care Act (43 P. S. §§ 932.1—932.6).

Bureau—The Bureau of Labor Law Compliance or its successor bureau within the Department assigned enforcement of the act.

Department—The Department of Labor and Industry of the Commonwealth.

Employee—

(i) An individual employed by a health care facility or by the Commonwealth or a political subdivision or instrumentality of the Commonwealth who is involved in direct patient care activities or clinical care services and who receives an hourly wage or is classified as a nonsupervisory employee for collective bargaining purposes.

(ii) The term includes an individual employed through a personnel agency that contracts with a health care facility to provide personnel.

(iii) The term does not include a physician, physician assistant, dentist or worker involved in environmental services, clerical, maintenance, food service or other job classification not involved in direct patient care and clinical care services.

Employer—A health care facility as defined in section 2 of the act (43 P. S. § 932.2) or the Commonwealth, a political subdivision or an instrumentality of the Commonwealth engaged in direct patient care activities or clinically related health services.

Health care facility—

(i) A facility which provides clinically related health services, regardless of whether the operation is for profit or nonprofit and regardless of whether operation is by the private sector or by State or local government.

(ii) The term includes:

(A) A general or special hospital, a psychiatric hospital, a rehabilitation hospital, a hospice, an ambulatory surgical facility, a long-term care nursing facility, a cancer treatment center using radiation therapy on an ambulatory basis, and an inpatient drug and alcohol treatment facility.

(B) A facility which provides clinically related health services and which is operated by the Department of Corrections, the Department of Health, the Department of Military and Veterans Affairs or the Department of Public Welfare.

(C) A mental retardation facility operated by the Department of Public Welfare.

(iii) The term does not include:

(A) An office used primarily for private or group practice by a health care practitioner.

(B) A facility providing treatment solely on the basis of prayer or spiritual means in accordance with the tenets of a church or a religious denomination.

(C) A facility conducted by a religious organization for the purpose of providing health care services exclusively to clergy or other individuals in a religious profession who are members of the religious denomination conducting the facility.

Secretary—The Secretary of the Department or the Secretary's designee.

Violation—Each discrete time that a health care facility or employer does not comply with the act.

Witness—A person with personal knowledge of an alleged violation of the act.

§ 225.3. Complaint and investigation procedure.

(a) Upon receipt of a complaint or its own initiative, the Bureau will investigate alleged violations of the act.

(b) An aggrieved employee who believes there is a violation of this act against him by a health care facility or employer may file a complaint, within 60 days of the violation, with the Bureau.

(c) The complaint must be in writing, signed and set forth the grounds for the complaint. A complaint must contain:

(1) The name and address of the complainant.

(2) The name and address of the employer against whom the complaint is filed.

(3) A statement of the facts forming the basis of the complaint or conclusion that there has been one or more violations of the act, including the date, time and place of the alleged violation. A complaint may contain multiple violations.

(4) The name of known witnesses.

(5) Other information that may be pertinent to an investigation.

(d) The Bureau will prepare complaint forms that will be available on the Department's web site at www.dli.state.pa.us. The forms will be available in English and Spanish.

(e) The Bureau will accept complaints that are not placed on the complaint form.

(f) The Bureau will record the date of receipt on a complaint. The Bureau will review and begin investigation of a complaint within 60 days of receipt. If a complaint does not provide the information required under subsection (c), the Bureau will advise the complainant in writing of the procedures necessary to comply with subsection (c) and allow the party 30 days from the date of the Bureau's letter to provide the required missing information. If the party fails to provide information fully conforming to the requirements of subsection (c), the Bureau may dismiss the complaint and will notify the complainant in writing of the dismissal. The Bureau's written notification will include a statement of the basis for the Bureau's dismissal.

(g) All health care facilities and employers shall establish a system for keeping records of circumstances when 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. These records shall be kept for 3 years.

§ 225.4. Administrative penalties.

(a) The Department may impose any or all of the following penalties under section 6 of the act (43 P. S. § 932.6):

(1) A fine of \$100 to \$1,000 per violation.

(2) Order a health care facility or employer to take an action which the Department deems necessary to correct a violation of section 3 of the act (43 P. S. § 932.3) or this chapter. Actions ordered may include payment of restitution to employees, directives for compliance with the act such as changes to policy and procedures to ensure future compliance, and directives to remedy

unlawful adverse employment decisions as prohibited under section 3(b) of the act. An order will be based on the facts of each individual complaint and practices of the health care facility and employer.

(b) The Department may base administrative penalties on the following factors:

(1) *Size of business.* The Department will take into consideration the number of employees of the health care facility or employer on the date the violation occurred at the site where the alleged violation occurred.

(2) *History of previous violations.* The Department will take into consideration the number of assessed violations for the health care facility or employer in a preceding 36-month period. Only violations for which penalties were assessed and which are not subject to further appeal will be included.

(3) *Remedial efforts.* The Department will consider voluntary remedial efforts designed to prevent future violations and reinforce the importance of compliance with the act.

(4) *Degree of cooperation.* The Department will also consider an employer's lack of cooperation with an investigation, an employer's failure to provide requested information and action which would constitute a lack of effort to abate a violation, such as retaliation.

(5) *Length of mandated overtime.* The Department will take into consideration the length of the mandated overtime and other factors concerning the severity of the violation.

Cross References

This section cited in 34 Pa. Code § 225.7 (relating to hearing).

§ 225.5. Administrative notice of violation and proposed penalty.

(a) After the completion of an investigation on an alleged violation of the act and upon finding that the act has been violated, the Bureau will issue an administrative decision containing findings and proposed penalties.

(b) The Bureau will serve by first class mail upon the violating health care facility or employer and the complainant a copy of its administrative decision and proposed penalty.

(c) A health care facility or employer served with an administrative decision and proposed penalty may accept the notice and pay the penalty, request a reduction in penalty or contest the administrative decision and proposed penalty under § 225.6 (relating to contesting an administrative decision and proposed penalty).

(d) A request for a reduction in the penalty shall be made in writing to the Bureau within 10 days of the mailing date of the administrative decision and propose an alternative penalty for the Bureau's consideration setting forth mitigating circumstances. The Bureau will expeditiously act on the request for reduction of the penalty within 10 days of receipt. The filing of a request for reduction does

not toll or extend the 30-day period for requesting a hearing under § 225.6. The Bureau will provide notice of the request for reduction in penalty to the complainant.

(e) After the completion of an investigation of alleged violations of the act and upon findings that the act has not been violated, the Bureau will provide written notice to the complainant and the health care facility or employer that the investigation has been closed. The written notice when a violation is not found will include a statement of the reason.

§ 225.6. Contesting an administrative decision and proposed penalty.

(a) A health care facility or employer may contest an adverse administrative decision by requesting a hearing.

(b) The health care facility or employer contesting the administrative decision shall file an original and two copies of a written request for a hearing with the Bureau within 30 days of the mailing date of the administrative decision. The hearing request shall be mailed to the Bureau at the address listed on the administrative decision.

(c) The Bureau will notify the complainant of any request made for hearing under this section.

(d) An untimely request for a hearing may be dismissed without further action by the Bureau.

(e) Filing of a request for a hearing shall act as a supersedeas of the administrative decision on the violation and proposed penalties.

Cross References

This section cited in 34 Pa. Code § 225.5 (relating to administrative notice of violation and proposed penalty).

§ 225.7. Hearing.

(a) The Secretary will assign the request for a hearing to a hearing officer who will schedule a de novo proceeding. The parties and the complainant will receive written notice of the hearing date, time and place by first class mail at least 30 days prior to the scheduled date of the hearing, unless another method of notification is requested.

(b) The hearing will be conducted in a manner to provide all parties the opportunity to be heard. The hearing officer will not be bound by strict rules of evidence. Relevant evidence of reasonably probative value may be received into evidence. Reasonable examination and cross-examination of witnesses will be permitted.

(c) The parties may be represented by legal counsel, but legal representation at the hearing is not required.

(d) Testimony will be recorded and a full record kept of the proceeding.

(e) The parties will be provided the opportunity to submit briefs addressing issues raised at the hearing.

(f) The Bureau and the health care facility or employer will be the parties at the hearing.

(g) The Bureau will have the burden of proving by a preponderance of the evidence that the health care facility violated the act and that the proposed penalty is appropriate under the factors in § 225.4(b) (relating to administrative penalties).

(h) To the extent not covered by this chapter, hearings will be governed by 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure).

§ 225.8. Petition to intervene.

(a) The Bureau and the health care facility or employer will be the parties at the hearing.

(b) A person other than the Bureau and the health care facility or employer may request to intervene in a hearing under the following conditions:

(1) He can demonstrate any of the following:

(i) A right conferred by law.

(ii) An interest which may be so directly affected and which is not adequately represented by the existing parties, and as to which petitioners may be bound by the Department's actions. The following may have an interest:

(A) Complainants' union or trade association representatives.

(B) Consumers, patients or other patrons served by the respondent.

(C) Holders of securities of the health care facility or employer.

(D) Employees of the health care facility or employer.

(E) Competitors of the respondent.

(iii) Any other interest of a nature so that participation of the petitioner may be in the public interest.

(2) The party files a petition to intervene with the hearing officer and the existing parties in the hearing under 1 Pa. Code § 35.29 (relating to form and contents of petitions to intervene) no later than 10 days before the scheduled hearing unless the party shows good cause and there is no prejudice to the existing parties from the late filing. Existing parties may file an answer under 1 Pa. Code § 35.36 (relating to answers to petitions to intervene) within 20 days or other time set by the hearing officer.

(c) The complainant will have the right to intervene by sending a letter or notice to the hearing officer, the Bureau and the health care facility or employer no later than 10 days before the scheduled hearing. The complainant will not be required to demonstrate his basis for intervention as required under subsection (b).

(d) As soon as possible after the time set for filing of answers, the hearing officer will rule on the petition and may grant or deny intervention in whole or in part, or may limit the intervenor's participation in the hearing. The hearing officer may tentatively grant intervention before the hearing only to avoid detriment to the public interest and if the hearing officer issues a final ruling on intervention before the hearing begins.

(e) A hearing officer will not grant a petition to intervene during a hearing unless good cause is shown for the late filing, the parties have the opportunity to respond or object, and the petition complies with this section.

§ 225.9. Adjudications.

(a) The Secretary will issue a written adjudication. The adjudication will include all relevant findings and conclusions, and the rationale for the adjudication.

(b) The adjudication will include a notification to the parties of appeal rights to Commonwealth Court.

(c) The adjudication will be served upon all parties, complainants, intervenors and counsel of record.

Cross References

This section cited in 34 Pa. Code § 225.10 (relating to further appeal rights).

§ 225.10. Further appeal rights.

A party, including an intervenor, aggrieved by an adjudication rendered under § 225.9 (relating to adjudications) may file an appeal to Commonwealth Court within 30 days from mailing of the decision as prescribed by law or rule of court. A direct appeal from an agency adjudication to Commonwealth Court is provided in 42 Pa.C.S. § 763 (relating to direct appeals from government agencies).

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(372868) No. 479 Oct. 14

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