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Greetings:

Attached are AFSCME Council 13 comments on proposed regulations of the Department of Labor and Industry (ID No. 12-91; IRRC No. 2957) regarding prohibition of excessive overtime in Health Care Act.

Very truly yours,

David R. Fillman
Executive Director

DRF/kb

**COMMENTS OF AFSCME COUNCIL 13
ON PROPOSED REGULATIONS OF THE DEPARTMENT OF
LABOR AND INDUSTRY (ID NO. 12-91; IRRC NO. 2957)
RE: PROHIBITION OF EXCESSIVE OVERTIME IN HEALTH CARE ACT**

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AFSCME Council 13 represents over 7,500 health care workers from all areas of the health care industry in Pennsylvania. Members include nurses, caregivers, service and maintenance employees all of whom work in Pennsylvania's hospitals, nursing homes, health care agencies and state health facilities. Many are "employees" as defined by Act 102. AFSCME Council 13 is affiliated with AFSCME International which represents over 1,600,000 public and private sector employees.

The regulations that have issued by the Department of Labor and Industry are woefully inadequate. The proposed rules focus almost entirely on the procedure for filing and prosecuting a complaint and ignore the substantive provisions of Act 102. To that end, AFSCME urges the Department to include regulations requiring employers to maintain records necessary for investigators to evaluate potential violations. With regard to procedures, the rules make no provision for a complaint to be filed and prosecuted by a labor union. Similarly, class action complaints are not allowed. This must be changed so that Act 102 can be fully enforced. The Department of Labor and Industry does not have a sufficient number of staff to investigate single complaints and it would be far more effective and efficient to allow the filing of class actions. A class action complaint will also likely promote compliance with the statute.

AFSCME Council 13's comments on specific proposed regulations follows

- §225.3(a)
 1. The regulation should include time limits on investigations.

- §225.3(b)
 1. The regulation must be expanded to allow union representation.
 2. The regulation must be expanded to allow for class action type complaints.
 3. Limiting complaints to incidents which occurred sixty days prior, is too short a period of time and is not supported by the Act.
- §225.3(c)

Complainants should not be required to identify witnesses in the initial complaints. The requirements will chill complainants from coming forward.
- §225.3(d)

Complaint forms should be available in multiple languages as appropriate.
- §225.3(f)

The regulation should include time limits for the Department to respond. The date for which additional information has to be submitted should be longer and should be triggered upon receipt by complainant of the Notice of Deficiency.
- §225.4(a)

As noted, the Act states that the Department may order a health care facility to take an action necessary to correct a violation of the Act. The regulation should make it clear that 'an action necessary to correct a violation' includes reinstatement of an employee who may have lost their job, or removal of disciplinary action taken against the employee.

Additionally, interest on back pay at the statutory rate should be included as a remedy.

- §225.5(a)

There must be time limits for completion of investigations.

- §225.5(b)

The employee must receive a copy of the administrative decision.

- §225.6

An employee must be able to contest an adverse administrative decision.

Appeal rights should not extend only to employers.

- §225.7(c)

The regulation must be changed to allow a complainant to be represented by his/her Union, without legal counsel. This would be similar to the procedure used in unemployment compensation hearings.

- §225.7(f)

The Complainant must be identified as a party.

- §225.7(g)

The Bureau should have the initial burden to establish a violation of the Act. At that point, the burden should shift to the employer to prove that an exception applies.

Employers should be obligated to maintain contemporaneous records to demonstrate that "unforeseeable emergent circumstance" exists.

- §225.8

As noted above, we believe that the complainant should be a party. In the absence of that, a complainant should automatically have intervention status. Certainly any complainant is "directly affected." Therefore, the proposed rule should so specify.

- §225.9

The complainant must receive a copy of the adjudication.

The proposed regulations must include requirements that employers maintain accurate records so that the Bureau can assure compliance with the Act. The following employer record keeping provisions should be incorporated into the regulations:

1. Employers should be required to maintain accurate and adequate records of the "reasonable efforts" it made to obtain other staffing before attempting to mandate an employee to work overtime. Those records should be open for inspection by the Bureau;
2. Employers should maintain accurate and adequate records with respect to any case where an employee voluntarily waives the requirement of Section 3(d) of the Act, and such records should be open for inspection by the Bureau;
3. Employers should maintain accurate and adequate records to establish the "agreed to, predetermined and regularly scheduled daily work shifts" for employees covered by the Act and such records should be open for inspection by the Bureau;
4. Employers shall permit an authorized representative of the Department of Labor & Industry to interrogate employees in private and without the presence of a supervisor or manager, at the place of employment and during work hours

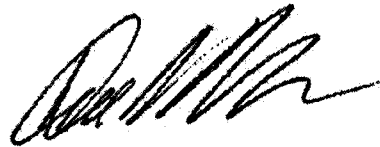
with respect to overtime hours mandated, the circumstances surrounding that mandation, and the efforts by the employer to obtain other staffing before mandating overtime;

Act 102 became law on July 1, 2009. Pursuant to the law, regulations were to be promulgated within eighteen (18) months or by December 31, 2010. The proposed regulations, issued thirty six (36) months after the law was enacted, do not adequately protect employees and are not sufficient to enforce this very important and meaningful legislation enacted by the General Assembly.

On behalf of the work families and employees AFSCME represents in Pennsylvania, we urge you to amend the regulations to reflect the concerns we have specified above. We welcome the opportunity to answer any questions that the Department, the Legislative Standing Committees and the IRRC may have.

Thank you for the opportunity to address these issues.

Very truly yours,

A handwritten signature in black ink, appearing to read 'David R. Fillman', with a stylized, flowing script.

David R. Fillman, Executive Director
AFSCME Council 13