

APR 20 2011

31ST DISTRICT
PATRICIA H. VANCE

□ SENATE BOX 203031
HARRISBURG, PA 17120-3031
(717) 787-8524
FAX (717) 772-0576
TTY (800) 364-1581

□ 3806 MARKET STREET
CAMP HILL, PA 17011
(717) 975-1985
FAX (717) 975-2247
EMAIL: vance@pasen.gov
WEBSITE: www.senatorvance.com
TOLL FREE: 1 (877) PAT-VANCE
OR 1 (877) 728-8262



Senate of Pennsylvania

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TO: ALL SENATORS
FROM: Senator Patricia H. Vance
DATE: April 18, 2011
SUBJECT: Memo #19 – Permitting hospitals to continue current employee payment practices

In the near future, I plan to introduce legislation that would amend The Minimum Wage Act of 1968 in response to a March 26, 2010 Philadelphia Court of Common Pleas decision that has the potential to significantly impact the pay practices of many hospitals and health systems in Pennsylvania.

Historically, employers in Pennsylvania have defined their work week as either 40 hours in a 7 day week or 80 hours in a 14 day week. Overtime was paid based on hours in excess of either the 40 or 80 depending on how the work week was defined. This arrangement is expressly permitted in the federal Fair Labor Standards Act which stipulates that hospitals and other specified institutions “primarily engaged in the care of the sick, the aged or the mentally ill” may use an alternate method of calculating overtime, called the “8-80” period method. If both the employer and employees agree, the “8-80” period method may be used to pay overtime for all hours in excess of 8 hours in a single work day as well as for all hours worked in excess of 80 in a 14 consecutive day work period. If a hospital or other specified health system has such an agreement or understanding with employees, overtime does not have to be paid for hours worked in excess of 40 in a single, 7 consecutive day work week.

In *Turner v. Mercy Health System, et.al., Nos. 3670 & 5155 (Phila. Ct. Com. Pl. filed March 10, 2010)*, the court held that The Minimum Wage Act of 1968 clearly defines a work week as 40 hours during a 7 day period. The court found the “8-80” period arrangement in clear violation of the act. This legislation would ensure that hospital and health system employers could continue, by agreement or understanding, the flexible scheduling of an “8-80” period to meet the needs of their employees and patients.

If you are interested in co-sponsoring this legislation, please contact my office at 787-8524 or email Amy Bolze at abolze@pasen.gov.