

SETTLEMENT AGREEMENT
National Grievance – 12/27/2011 and 2/2/12

The National Veterans Affairs Council – American Federation of Government Employees (“AFGE” or the “Union”) and the Department of Veterans Affairs (“Agency”) hereby agrees to settle all disputes arising out of the AFGE’s National Grievance dated 12/27/2011, and subsequent National Grievance dated 2/2/2012 in the matter of the Department of Veterans Affairs (VA), Veterans Health Administration (VHA) failure to comply with 38 USC Section 7459 et seq. concerning mandated overtime, and therefore failure to comply with the 2011 Master Agreement between the VA and AFGE (MCBA) Article 2 Section 1 (“Mandatory Overtime Grievance” or “National Grievance”), in accordance with the following terms and conditions:

I. Withdrawal of Grievance:

By execution of this settlement agreement (hereafter “Agreement” or “Settlement Agreement”), AFGE voluntarily withdraws the National Grievance and waives any and all actions, claims, complaints, grievances, appeals, or proceedings of whatever nature arising from the allegations contained in the National Grievance, with the exception of any grievances that may arise by reason of breach of any term of this Settlement Agreement. AFGE agrees to promptly provide any document or take other action necessary to effectuate the withdrawal or dismissal of the National Grievance.

II. Terms of the Settlement

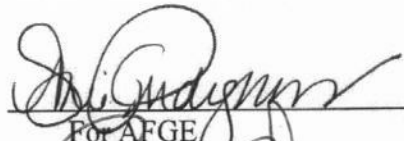
By execution of this Agreement, AFGE and the Agency (collectively the “parties”) have agreed to the following:

1. The Parties agree to Human Resources Management Letter (“HRML”) No. 05-12-12 (December 12, 2012), as proper guidance to the VHA field concerning implementation of the mandatory overtime provisions in Section 602 of the “Caregivers and Veterans Omnibus Health Services Act of 2010” (Public Law 111-163, 38 USC 7459). (See Attachment A).
2. The Agency agrees to follow the law as it pertains to mandating overtime for nursing staff.
3. The Agency confirms that the stations enumerated in the 12/27/2011 and 2/2/2012 National Grievances are in compliance with this settlement agreement including the December 12, 2012 HRML, and the law as it pertains to mandatory overtime for nursing staff.
4. The Agency has acknowledged that the jointly supported HRML, dated December 12, 2012 was distributed by Agency email.


III. Stipulations:

1. The parties have entered into this Settlement Agreement freely and voluntarily.
2. This Settlement Agreement does not constitute an admission of guilt, fault, or wrongdoing by either party.
3. The obligations of the parties specified above constitute consideration sufficient to render this Settlement Agreement enforceable by either party.

4. This Settlement Agreement shall not serve as precedent for resolving any other complaints, grievances, appeals, or actions that may be filed.
5. This Settlement Agreement constitutes the entire understanding between the parties regarding the resolution and settlement of the National Grievance, and there are no other terms or commitments, verbal or written, regarding the settlement of the National Grievance.
6. Either party may bring a claim in the form of a grievance arising by reason of breach of any term of this Settlement Agreement.
7. This Settlement Agreement may not be modified, except by a written agreement signed by the undersigned herein:



For AFGE



For the Agency

DATE: 3/18/2013_____

DATE: 3/20/2013_____

ATTACHMENT A



DEPARTMENT OF VETERANS AFFAIRS
DEPUTY ASSISTANT SECRETARY FOR
HUMAN RESOURCES MANAGEMENT
WASHINGTON DC 20420

DEC 12 2012

HUMAN RESOURCES MANAGEMENT LETTER NO. 05-12-12

Guidance on Mandatory Overtime Duty for Nursing Staff

1. Purpose. The purpose of this Human Resources Management Letter is to provide guidance regarding the prohibition of mandatory overtime duty for nursing staff under 38 U.S.C. 7459.

2. Background. Section 602 of the "Caregivers and Veterans Omnibus Health Services Act of 2010" (Public Law 111-163, dated May 2010, codified at 38 U.S.C. 7459) generally prohibits mandatory overtime for nursing staff. Nursing staff is defined as registered nurses, nurse anesthetists, licensed practical or vocational nurses, and nursing assistants.

a. Nursing staff may not be required to work more than 40 hours (or 24 hours if on the Baylor Plan under 38 U.S.C. 7456) in an administrative work week or more than 8 consecutive hours (or 12 hours if on the Baylor Plan or the 72/80 alternate work schedule under 38 U.S.C. 7456A) in a day.

b. Nursing staff may, on a voluntary basis, elect to work approved overtime hours otherwise prohibited under subparagraph a above.

c. The refusal of nursing staff to work hours otherwise prohibited by subparagraph a above may not be grounds for any adverse action.

d. Nursing staff may be required to work hours otherwise prohibited only if:

(1) The work is a consequence of an emergency that could not have been reasonably anticipated;

(2) The emergency is non-recurring and is not caused by or aggravated by the inattention of management officials or a lack of reasonable contingency planning;

(3) Management has exhausted all good faith and reasonable attempts to obtain voluntary workers;

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(4) The nursing staff have critical skills and expertise that are required for the work; and

(5) The work involves work for which the standard of care for a patient assignment requires continuity of care through completion of a case, treatment, or procedure.

e. Nursing staff may not be required to work overtime hours after the requirement for a direct role by the staff in responding to medical needs resulting from the emergency ends.

3. Guidance

a. Mandatory overtime for nursing staff shall be used only under conditions wherein necessary functions cannot be performed through planned coverage. However, mandatory overtime duty should not be required of employees when it will impair their health or efficiency or cause them extreme hardship. Registered nurses (including nurse anesthetists) on any work schedule shall not provide direct patient care in excess of 12 consecutive hours or in excess of 60 hours in any 7-day period, except in the case of nurses providing emergency care.

b. When necessary to ensure the continuity of patient care services in an emergency described in paragraph 2d above, management may require mandatory overtime. The following examples provide situations meeting the criteria for mandatory overtime under emergency circumstances. The examples are not all inclusive and are intended only for use as a guide when determining the need for the use of mandatory overtime under emergency circumstances. There may be other emergent patient care situations outside of the examples described below which would warrant the need for mandatory overtime under emergency circumstances, i.e., overtime will be authorized for any emergency situation in which patient safety may be at risk.

(1) An unexpected nursing staff absence/call out has occurred and is affecting the continuity of patient care. This is an unanticipated absence that has not occurred due to pre-scheduled leave, and the absence has not afforded the manager/supervisor an opportunity to utilize any other alternatives to address the absence.

(2) Severe weather or a natural or man-made disaster has occurred and is preventing nursing staff from reporting to patient care assignment.

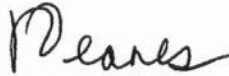
(3) A staff/facility tragedy or accident has occurred and is preventing nursing staff from reporting to patient care assignment.

(4) Unexpected patient care delivery modifications that are not anticipated require nursing staff to continue providing patient care. This includes 1:1 patient observations or late transfers/admissions.

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(5) A patient complication or code has occurred which has resulted in an unexpected need for additional nursing staff.

4. Questions. Questions that are specific to hours of duty may be directed to Worklife and Benefits Service (058) at <http://vaww1.va.gov/ohrm/WorkLife/Contacts.htm>. Questions regarding the identification of situations for which overtime may be required for nursing staff under emergency circumstances may be directed to the VACO Office of Nursing Services at (202) 461-6958 or (202) 461-6988.



Tonya M. Deanes