

# NOTICE

ORS 441.180 requires this hospital to post this notice of the following Oregon laws affecting nurses.

## STAFFING

- ORS 441.162 Written staffing plan for nursing services  
ORS 441.166 Need for replacement staff  
ORS 441.168 Leaving a patient care assignment

## EMPLOYMENT PRACTICES

- ORS 441.174 Retaliation prohibited  
ORS 441.176 Remedies for retaliation  
ORS 441.178 Unlawful employment practices  
Civil action for retaliation

## OUTSIDE EMPLOYMENT

- ORS 441.192 Notice of employment outside of hospital

- These sections of Oregon Law are available from the hospital Nursing Administration office. You may also access the text of the law on the State of Oregon website at <http://www.oregonlaws.org/ors/441.180>
- For information on staffing, you may also contact Oregon Health Services Healthcare Licensing and Certification, Department of Human Services, 800 NE Oregon, #640, Portland, OR 97232, or via phone ad 503/731-4013.
- For information on employment practices, you may also contact Oregon Bureau of Labor and Industries, 800 NE Oregon, #32, Portland OR 97232 or at 503/731-4200.

## **441.162<sup>1</sup>**

### **Written staffing plan for nursing services**

(1) A hospital shall be responsible for the implementation of a written hospital-wide staffing plan for nursing services. The staffing plan shall be developed, monitored, evaluated and modified by a hospital staffing plan committee. To the extent possible, the committee shall:

(a) Include equal numbers of hospital nurse managers and direct care registered nurses;

(b) Include at least one direct care registered nurse from each hospital nurse specialty or unit, to be selected by direct care registered nurses from the particular specialty or unit. The hospital shall define its own specialties or units; and

(c) Have as its primary consideration the provision of safe patient care and an adequate nursing staff pursuant to ORS chapter 441.

(2) The hospital shall evaluate and monitor the staffing plan for effectiveness and revise the staffing plan as necessary as part of the hospital's quality assurance process. The hospital shall maintain written documentation of these quality assurance activities.

(3) The written staffing plan shall:

(a) Be based on an accurate description of individual and aggregate patient needs and requirements for nursing care and include a periodic quality evaluation process to determine whether the staffing plan is appropriately and accurately reflecting patient needs over time.

(b) Be based on the specialized qualifications and competencies of the nursing staff. The skill mix and the competency of the staff shall ensure that the nursing care needs of the patients are met and shall ensure patient safety.

(c) Be consistent with nationally recognized evidence-based standards and guidelines established by professional nursing specialty organizations and recognize differences in patient acuteness.

(d) Establish minimum numbers of nursing staff including licensed practical nurses and certified nursing assistants required on specified shifts. At least one registered nurse and one other nursing staff member must be on duty in a unit when a patient is present.

(e) Include a formal process for evaluating and initiating limitations on admission or diversion of patients to another acute care facility when, in the judgment of the direct care registered nurse, there is an inability to meet patient care needs or a risk of harm to existing and new patients.

(4) The hospital shall maintain and post a list of on-call nursing staff or staffing agencies to provide replacement for nursing staff in the event of vacancies. The list of on-call nurses or agencies must be sufficient to provide replacement staff.

(5)(a) An employer may not impose upon unionized nursing staff any changes in wages, hours or other terms and conditions of employment pursuant to a staffing plan developed or modified under subsection (1) of this section unless the employer first provides notice to and, on request, bargains with the union as the exclusive collective bargaining representative of the nursing staff in the bargaining unit.

(b) A staffing plan developed or modified under subsection (1) of this section does not create, preempt or modify a collective bargaining agreement or require a union or employer to bargain over the staffing plan while a collective bargaining agreement is in effect. [2001 c.609 §2; 2005 c.665 §2]

Note: See note under [441.160 \(Hospital defined for ORS 441.162 to 441.170\)](#).

## **441.166<sup>1</sup>**

### **Need for replacement staff**

(1) When a hospital learns about the need for replacement staff, the hospital shall make every reasonable effort to obtain registered nurses, licensed practical nurses or certified nursing assistants for unfilled hours or shifts before requiring a registered nurse, licensed practical nurse or certified nursing assistant to work overtime.

(2) A hospital may not require a registered nurse, licensed practical nurse or certified nursing assistant to work:

(a) Beyond the agreed-upon shift;

(b) More than 48 hours in any hospital-defined work week; or

(c) More than 12 consecutive hours in a 24-hour time period, except that a hospital may require an additional hour of work beyond the 12 hours if:

(A) A staff vacancy for the next shift becomes known at the end of the current shift; or

(B) There is a potential harm to an assigned patient if the registered nurse, licensed practical nurse or certified nursing assistant leaves the assignment or transfers care to another.

(3)(a) Time spent in required meetings or receiving education or training shall be included as hours worked for purposes of subsection (2) of this section.

(b) Time spent on call but away from the premises of the employer may not be included as hours worked for purposes of subsection (2) of this section.

(c) Time spent on call or on standby when the registered nurse, licensed practical nurse or certified nursing assistant is required to be at the premises of the employer shall be included as hours worked for purposes of subsection (2) of this section.

(4) The provisions of this section do not apply to nursing staff needs:

(a) In the event of a national or state emergency or circumstances requiring the implementation of a facility disaster plan;

(b) In emergency circumstances identified by the Oregon Health Authority by rule; or

(c) If a hospital has made reasonable efforts to contact all of the on-call nursing staff or staffing agencies on the list described in ORS [441.162 \(Written staffing plan for nursing services\)](#) and is unable to obtain replacement staff in a timely manner. [2001 c.609 §4; 2005 c.665 §1; 2009 c.595 §734]

Note: See note under [441.160 \(Hospital defined for ORS 441.162 to 441.170\)](#).

## **441.168<sup>1</sup>**

### **Leaving a patient care assignment**

A registered nurse at a hospital may not place a patient at risk of harm by leaving a patient care assignment during an agreed upon shift or an agreed upon extended shift without authorization from the appropriate supervisory personnel. [2001 c.609 §5]

Note: See note under [441.160 \(Hospital defined for ORS 441.162 to 441.170\)](#).

## **441.174<sup>1</sup>**

### **Retaliation prohibited**

(1) A hospital may not take retaliatory action against a nursing staff because the nursing staff:

(a) Discloses or intends to disclose to a manager, a private accreditation organization or a public body an activity, policy or practice of the hospital or of a hospital that the nursing staff reasonably believes is in violation of law or a rule or is a violation of professional standards of practice that the nursing staff reasonably believes poses a risk to the health, safety or welfare of a patient or the public;

(b) Provides information to or testifies before a private accreditation organization or a public body conducting an investigation, hearing or inquiry into an alleged violation of law or rule or into an activity, policy or practice that may be in violation of professional standards of practice by a hospital that the nursing staff reasonably believes poses a risk to the health, safety or welfare of a patient or the public;

(c) Objects to or refuses to participate in any activity, policy or practice of a hospital that the nursing staff reasonably believes is in violation of law or rule or is a violation of professional standards of practice that the nursing staff reasonably believes poses a risk to the health, safety or welfare of a patient or the public; or

(d) Participates in a committee or peer review process or files a report or a complaint that discusses allegations of unsafe, dangerous or potentially dangerous care.

(2) Except as provided in subsection (3) of this section, the protection against retaliatory action in subsection (1) of this section does not apply to a nursing staff, unless the nursing staff, before making a disclosure to a private accreditation organization or a public body as described in subsection (1)(a) of this section:

(a) Gives written notice to a manager of the hospital of the activity, policy, practice or violation of professional standards of practice that the nursing staff reasonably believes poses a risk to public health; and

(b) Provides the manager a reasonable opportunity to correct the activity, policy, practice or violation.

(3) A nursing staff is not required to comply with the provisions of subsection (2) of this section if the nursing staff:

(a) Is reasonably certain that the activity, policy, practice or violation is known to one or more managers of the hospital or an affiliated hospital and an emergency situation exists;

(b) Reasonably fears physical harm as a result of the disclosure; or

(c) Makes the disclosure to a private accreditation organization or a public body for the purpose of providing evidence of an activity, policy, practice or violation of a hospital or an affiliated hospital that the nursing staff reasonably believes is a crime. [2001 c.609 §10]

Note: See note under [441.160 \(Hospital defined for ORS 441.162 to 441.170\)](#).

## **441.176<sup>1</sup>**

### **Remedies for retaliation**

(1) A nursing staff aggrieved by an act prohibited by ORS [441.174 \(Retaliation prohibited\)](#) may bring an action in circuit court of the county in which the hospital is located. All remedies available in a common law tort action are available to a nursing staff if the nursing staff prevails in an action brought under this subsection and are in addition to any remedies provided in subsection (2) of this section.

(2) In an action brought under subsection (1) of this section, a circuit court may do any of the following:

(a) Issue a temporary restraining order or a preliminary or permanent injunction to restrain a continued violation of ORS [441.174 \(Retaliation prohibited\)](#).

(b) Reinstatement the nursing staff to the same or equivalent position that the nursing staff held before the retaliatory action.

(c) Reinstatement full benefits and seniority rights to the nursing staff as if the nursing staff had continued in employment.

(d) Compensate the nursing staff for lost wages, benefits and other remuneration, including interest, as if the nursing staff had continued in employment.

(e) Order the hospital to pay reasonable litigation costs of the nursing staff, including reasonable expert witness fees and reasonable attorney fees.

(f) Award punitive damages as provided in ORS [31.730 \(Standards for award of punitive damages\)](#).

(3) Except as provided in subsection (4) of this section, in any action brought by a nursing staff under subsection (1) of this section, if the court finds that the nursing staff had no objectively reasonable basis for asserting the claim, the court may award costs, expert witness fees and reasonable attorney fees to the hospital.

(4) A nursing staff may not be assessed costs or fees under subsection (3) of this section if, upon exercising reasonable and diligent efforts after filing the action, the nursing staff moves to dismiss the action against the hospital after determining that no issue of law or fact exists that supports the action against the hospital. [2001 c.609 §11]

Note: See note under [441.160 \(Hospital defined for ORS 441.162 to 441.170\)](#).

## **441.178<sup>1</sup>**

### **Unlawful employment practices - civil action for retaliation**

(1) A hospital that takes any retaliatory action described in ORS [441.174 \(Retaliation prohibited\)](#) against a nursing staff commits an unlawful employment practice.

(2) A nursing staff claiming to be aggrieved by an alleged violation of ORS [441.174 \(Retaliation prohibited\)](#) may file a complaint with the Commissioner of the Bureau of Labor and Industries in the manner provided by ORS [659A.820 \(Complaints\)](#). Except for the provisions of ORS [659A.870 \(Election of remedies\)](#), [659A.875 \(Time limitations\)](#), [659A.880 \(Ninety-day notice\)](#) and [659A.885 \(Civil action\)](#), violation of ORS [441.174 \(Retaliation prohibited\)](#) is subject to enforcement under ORS chapter 659A.

(3) Except as provided in subsection (4) of this section, a civil action under ORS [441.176 \(Remedies for retaliation\)](#) must be commenced within one year after the occurrence of the unlawful employment practice unless a complaint has been timely filed under ORS [659A.820 \(Complaints\)](#).

(4) The nursing staff who has filed a complaint under ORS [659A.820 \(Complaints\)](#) must commence a civil action under ORS [441.176 \(Remedies for retaliation\)](#) within 90 days after a 90-day notice is mailed to the nursing staff under this section.

(5) The commissioner shall issue a 90-day notice to the nursing staff:

(a) If the commissioner dismisses the complaint within one year after the filing of the complaint and the dismissal is for any reason other than the fact that a civil action has been filed.

(b) On or before the one-year anniversary of the filing of the complaint unless a 90-day notice has previously been issued under paragraph (a) of this subsection or the matter has been resolved by the execution of a settlement agreement.

(6) A 90-day notice under this section must be in writing and must notify the nursing staff that a civil action against the hospital under ORS [441.176 \(Remedies for retaliation\)](#) may be filed within 90 days after the date of mailing of the 90-day notice and that any right to bring a civil action against the hospital under ORS [441.176 \(Remedies for retaliation\)](#) will be lost if the action is not commenced within 90 days after the date of mailing of the 90-day notice.

(7) The remedies under this section and ORS [441.176 \(Remedies for retaliation\)](#) are supplemental and not mutually exclusive. [2001 c.609 §12; 2001 c.609 §12a]

Note: See note under [441.160 \(Hospital defined for ORS 441.162 to 441.170\)](#).

## **441.192<sup>1</sup>**

## Notice of employment outside of hospital

(1) A hospital, as defined in ORS [441.172 \(Definitions for ORS 441.172 to 441.182\)](#), may require a registered nurse who is receiving full employment benefits from the hospital to provide notice of any outside employment that may reasonably impede the ability of the nurse to fulfill the nurses obligation to the hospital in providing nursing services to patients under the hospitals care.

(2) If a hospital determines that the outside employment causes a risk to patients receiving services in the hospital, the hospital may require the nurse to discontinue the outside employment.

(3) A hospital may not unreasonably restrict the outside employment of nurses and may restrict outside employment only if the hospital provides in writing to the nurse an explanation of the hospitals documentation that the outside employment creates a risk to patients in the hospital. A nurse who does not discontinue outside employment if required by the hospital may be disciplined or terminated from employment by the hospital.

(4) A nurse who does not provide notice as required by a hospital pursuant to this section may be disciplined or terminated from employment by the hospital if the failure to provide notice creates a risk to a patient in the hospital. [2001 c.609 §18]

Note: See note under [441.160 \(Hospital defined for ORS 441.162 to 441.170\)](#).