

SETTLEMENT AND COMPLIANCE AGREEMENT

An Agreement entered into between the Department of Labor and Industries and
King County Department of Public Health, Jail Health Services Division

Re: Case Nos. 115444 and 115804

Section No. 1 – PARTIES: The following parties enter into this Settlement and Compliance Agreement, freely and voluntarily:

- [1] King County, Department of Public Health, Jail Health Services Division (hereinafter the County and JHS); and
- [2] The Department of Labor and Industries of the State of Washington (hereinafter the Department).

Section No. 2- PURPOSE: The parties enter into this Agreement to resolve complaints filed by Allison Marshall and Stuart Hanney against the County on March 13, 2017 and March 30, 2017, and additional mandatory overtime violations alleged by the Department in its investigation of those complaints.

- 2.1 The Department investigated a complaint filed by Allison Marshall on March 13, 2017. The Department alleges that the County violated RCW 49.28.140(1) by requiring Ms. Marshall to work mandatory overtime hours without making all reasonable efforts to obtain staffing on March 7, 2017. The Department also alleges that the County violated RCW 49.28.140(2) because Ms. Marshall alleges she was discriminated against and threatened with discipline on March 13 and 14, 2017 because she refused to accept a mandatory overtime shift on March 6, 2017.
- 2.2 The Department investigated a complaint filed by Stuart Hanney on March 30, 2017. The Department alleges that the County violated RCW 49.28.140(1) by requiring Mr. Hanney to work mandatory overtime hours without making all reasonable efforts to obtain staffing on November 2, 2016. The Department also alleges that the County committed two violations of RCW 49.28.140(2) because: (1) he received a Letter of Expectations on October 12, 2016 for refusing to work mandatory overtime on October 5, 2016; and (2) he received a Letter of Reprimand on March 8, 2017.
- 2.3 During its investigation of Ms. Marshall and Mr. Hanney's complaints, the Department reviewed mandate forms and interviewed nine other nurses and alleges that the County required them to work mandatory overtime hours without making all reasonable efforts to obtain staffing in violation of RCW 49.28.140(1). The Department's investigation alleges: (1) Evelyn Oen was mandated to work overtime on September 10, 2015 and February 26, 2017; (2) Deborah Charbonneau was mandated to work overtime on October 14, 2016; (3) Jonathan Richner was mandated to work overtime on October 11, 2016; (4) James Gleckler

was mandated to work overtime on March 5, 2017 and October 11, 2016; (5) Nellie Ohannes was mandated to work overtime on February 5, 2017 and October 5, 2016; (6) Moses Britt was mandated to work overtime on March 5, 2017 and February 19, 2017; (7) Jeff Su was mandated to work overtime on April 2, 2017; (8) Carolyn Clark was mandated to work overtime on October 14, 2016 and March 31, 2017; and (9) Pamela Dunderdale was mandated to work overtime on September 18, 2016 and January 3, 2017.

The Department would assess a \$5,000 penalty for each alleged violation described in Section No. 2.

- 2.4 The Department and the County desire to settle the claims between themselves regarding the complaints filed by Allison Marshall and Stuart Hanney and the violations the Department alleges against Evelyn Oen, Deborah Charbonneau, Jonathan Richner, James Gleckler, Nellie Ohannes, Moses Britt, Jeff Su, Carolyn Clark, and Pamela Dunderdale.
- 2.5 The parties have entered into this Agreement for the purpose of avoiding the inconvenience, uncertainty, and expense of litigation.
- 2.6 The parties freely enter into this Agreement as reflected by their signatures hereto.

Section No. 3- TERMS OF SETTLEMENT: In consideration of the mutual covenants of this Agreement, the parties agree as follows to fully and finally resolve all of their differences related to the above-referenced cases and alleged violations discussed in Section No. 2:

- 3.1 The County agrees to pay to the Department of Labor and Industries the total sum of \$10,000 (ten thousand). This amount will be paid directly to the Department of Labor and Industries. This sum represents the full and final settlement of all claims which were related to or raised in the above-referenced cases and alleged violations.
- 3.2 **Reasonable Efforts.** The parties agree that one of the ways an employer complies with RCW 49.28.140 is by using reasonable efforts to obtain staffing before mandating overtime. Reasonable efforts is defined in RCW 49.28.130(6). "Reasonable efforts" means that the employer, to the extent reasonably possible, does all of the following but is unable to obtain staffing coverage:
 - (a) Seeks individuals to volunteer to work extra time from all available qualified staff who are working;
 - (b) Contacts qualified employees who have made themselves available to work extra time;
 - (c) Seeks the use of per diem staff; and

(d) Seeks personnel from a contracted temporary agency when such staffing is permitted by law or an applicable collective bargaining agreement, and when the employer regularly uses a contracted temporary agency.

The Department has reviewed the County's new policy Mandating Procedures for Charge Nurses effective May 30, 2018 and the form "Efforts Made to Cover Shift Prior to Mandating OT". That policy and form comply with Chap. 49.28 RCW if all of the procedures in that policy are followed before mandating overtime, including written and/or electronic documentation of the efforts made to contact qualified staff to cover the shift.

RCW 49.28.140(3)(c) provides that the "reasonable efforts" exception in RCW 49.28.130(6) does not apply if overtime work is used to fill vacancies resulting from "chronic staff shortages".

Department Administrative Policy ES.A.11 defines a "chronic staff shortage" as follows:

Multiple factors impact what determines staffing adequacy and this will vary among facilities. To be chronic, such vacancies must be either (1) long-standing or (2) frequently recurring. A long-standing vacancy would result from a position that is open and not filled by the facility within a reasonable period of time. For example, where the full complement of nurses on an ICU is 12 and there are 2 unfilled positions, this could result in a "chronic" blank spot in the schedule if not filled in a reasonable period of time. By contrast, "frequently recurring" vacancies are the kind of blanks that result from staff vacations, medical leaves, leaves of absence and other absences that should be readily anticipated by the facility. The reasonable efforts exemption in the law does not apply to overtime work that is used to fill vacancies resulting from chronic staff shortages.

Although contested by King County, the Department has previously asserted that JHS had a chronic staff shortage. The Department agrees that based on a review of the JHS staffing, a chronic staff shortage does not currently exist.

- 3.3 **Training.** The County will provide training on the Law Restricting Mandatory Overtime for Nurses (RCW 49.28.140) to Nurse Supervisors, the Nurse Manager, and staff nurses. The training will include review of Department of Labor and Industries guidance about mandatory overtime (Administrative Policy ES.A.11) including its anti-retaliation provisions, and the new JHS service level procedure. The County will provide similar training about mandatory overtime to nurses who are hired in the future.
- 3.4 **Communications.** JHS Management will share information about staffing at jail facilities on a regular basis. JHS will post the House View matrix at the King County Correctional Facility (KCCF) and Maleng Regional Justice Center (MRJC). Additionally, every week the JHS staffing task force will post the needs list for the upcoming week.

- a. The Labor Management Committee (LMC) is to investigate how nurses working at MRJC or KCCF can be notified about staffing needs at the other site.
- 3.5 **Mandatory Overtime.** All occurrences of mandatory overtime will be reviewed by JHS staffing task force for four quarters, beginning April 2018.
- 3.6 **Reporting.** The County agrees to report on JHS nurse mandatory overtime every three months for four quarters, beginning April 2018.
 - a. **Recipients.** Cindy Sparks (L&I) and Hanna Welander (WSNA) are the assigned recipients of mandatory overtime reports provided every 3 months for four quarters starting April 2018.
 - b. **Reports.** The County will provide mandate occurrences and date of occurrence in the quarter. Each mandate occurrence shall include the form that was utilized to satisfy reasonable efforts, and an explanation for why the mandate occurred (e.g., same-day sick call).
 - c. JHS staffing task force will report to the LMC all instances of mandatory overtime.
- 3.7 The County contact for any future issues from the Department of Labor and Industries is Alex Golan, Employee & Labor Relations Manager for Public Health.
- 3.8 **Stuart Hanney Discipline.** The County will agree to rescind and remove the written reprimand issued to Stuart Hanney on March 8, 2017 from his personnel file. Also, the County will rescind and remove the Letter of Expectations to Mr. Hanney issued October 12, 2016 from his personnel file.
- 3.9 **Posting of the Law Restricting Mandatory Overtime for Nurses.** The County agrees to post a copy of the law restricting mandatory overtime for nurses, RCW 49.28.130 through RCW 49.28.150 and the Department's Administrative Policy ES.A.11 at KCCF and MRJC.
- 3.10 **JHS Staffing Task Force.** A scheduling task force including a supervisor(s), charge nurse(s), and nurse(s) will meet weekly to fill holes in schedule for the upcoming week.
- 3.11 **Addressing staff levels.** The County has implemented the following items to address staff needs; extra 10% pay for nurses who volunteer to be on standby; 12-hour shifts; and training contract agency and temporary staff.
- 3.12 **Mediation costs.** The County agrees to pay the Department's cost of mediation to Judicial Dispute Resolution for mediation which occurred with Judge Kallas on February 7, 2018 and May 31, 2018.

- 3.13 The consideration recited is the sole consideration for this Agreement. The parties understand that the consideration recited settles the claims of the Department against the County for its alleged violations of RCW 49.28.140(1) and 49.28.140(2) in 2016 and 2017.
- 3.14 For the consideration recited, the Department releases the County from allegations listed under ¶ 2.

Section No. 4 – MISCELLANEOUS:

- 4.1 This Agreement has been completely read, fully understood, and voluntarily accepted after complete consideration of all facts and respective legal rights. This is a fully integrated Agreement and constitutes the entire agreement between the parties. There are no other or further agreements which modify or amplify the terms of this Agreement. This Agreement constitutes the final written expression of all of the terms of settlement and is a complete and exclusive statement of those terms.
- 4.2 This Agreement is made and entered into in the State of Washington and shall be interpreted, enforced, and governed under the laws of this State. The language of the Agreement shall be construed as a whole, according to its fair meaning, and not strictly for or against any of the parties. Either party can sue for breach of this Agreement in a court of competent jurisdiction. Each side shall bear its own attorneys' fees.
- 4.3 All parties have been given sufficient time and opportunity to consult with legal counsel if desired.
- 4.4 The parties each present they have the full power and actual authority to enter into this Agreement and to carry out all of the actions required of them by this Agreement. Anyone executing this Agreement in a representative capacity warrants that they have full power and authority to bind their respective departments, agencies, corporations, partnerships, and/or entities.
- 4.5 For purposes of this Agreement, signatures by facsimile are acceptable.
- 4.6 The date of execution shall be the date of the last signature.

//

//

//

4.7 The parties understand that this Agreement is in full compromise of disputed and potential claims, the validity of which is expressly denied, and is not to be construed as an admission of liability.

EMPLOYER:

[King County]:

Cyndi Schaeffer on this 31 day of May, 2018.
Cyndi Schaeffer, Chief of Staff, King County Department of Public Health

DEPARTMENT OF LABOR AND INDUSTRIES:

David L. Johnson on this 31st day of May, 2018.
David L. Johnson, Employment Standards Program Manager