



OVERTIME

ACT COLLECTIVELY, ACT LOCALLY

Attraction and retention of the healthcare professionals

The FIQ is quite explicit, we must rely on the attraction and retention of the healthcare professionals in the public healthcare network. This inevitably involves offering attractive working conditions. To do this, the Federation identified the following priorities as part of their most recent demands:

- A reduction in the workload and job insecurity;
- A recognition of the responsibilities and inconveniences;
- A stabilization of the work teams and positions;

Overtime, a pretense of a management style

For several years now, overtime, whether it is compulsory or voluntary, has been used by several employers in the healthcare network as a management style to alleviate various problems, namely insufficient healthcare professional teams, flawed organization of work, budget cutbacks and poor management of human resources. These reasons are not enough to justify the harmful dangers and consequences that result from it.

Management without planning, without vision and without analysis exists more than ever, it threatens the health of the healthcare professionals sometimes that of the patients, and it is very expensive. In addition, excessive use of overtime causes unacceptable working conditions, motivated by misleading professional obligations from the administrators of the institutions, including administrators who are members of a professional order.

However, the typical reason found for the use of overtime is the obligation that the employers have to respond to extra work, an unforeseen absence of personnel or an emergency.

Here, we understand health care.



The gains from the last negotiations

The gains obtained by the FIQ during the last negotiations brought the introduction of a provincial target stipulating an increase in the number of full-time positions for the nurse (62%), licensed practical nurse (50%), and respiratory therapist (54%) job-title groups. Prior to accomplishing this work, the local parties have to do a workforce planning exercise in their institution. This step forward should help to improve the stability of the work teams as well as reduce the job insecurity for the healthcare professionals and the use of overtime and the personnel from the private healthcare employment agencies.

A clear message from the professional orders has confirmed the words of the FIQ and backed their actions: the managers must act and no longer adopt such short-term solutions the pressures of which rest on the shoulders of the healthcare professionals. Individually, locally and collectively, healthcare professionals can take action to stop this practice which hinders the ability of the system to attract new healthcare professionals, to keep those already on the job and to convince those who have left for the private sector to come back to the public sector.

The collective agreement

Article 19 of the collective agreement dealing with overtime does not provide for a situation where there is a lack of volunteers to work overtime. Some arbitrators are of the opinion that, when the collective agreement is silent on the subject of the obligation to work overtime, it becomes a management right. Moreover, the employer can require an employee to work overtime when it is the only possible measure for providing the services that are normally offered.

However, the opinion of the FIQ is that an employer cannot force an employee to work past her regular day or regular week, especially when overtime has become systematic. To require that an employee work overtime, the employer must:

- Have exhausted all other means set out in the collective agreement (replacement team, availability list, etc.) and must prove that the use of overtime is the only possible measure for providing the services normally provided;
- Have divided it equitably;
- Have given a clear and precise order;
- Ensured that the number of overtime hours required is not exaggerated;
- Have taken into account the legislation which limits their right to require overtime work;
- Have taken into account the reasons for refusal.

If the employer decides to impose a disciplinary measure on an employee who has refused to work overtime, an arbitrator can analyze, based on the criteria mentioned above, if the employer has exercised their right in an abusive, unreasonable or discriminatory manner.

The codes of ethics

The members of the FIQ are professionals whose activities are governed by a code of ethics specific to their profession. These codes set out the professional's duties and obligations to the patient, within a perspective of individual professional responsibility.

They subject professionals to certain obligations including, among others, the obligation to ensure the continuity of care while waiting for a competent replacement and to provide quality care by refraining from practising in a condition likely to compromise this care. All employees who find themselves in a situation of being obliged to work overtime must consider factors which ensure the public is protected. The patient's condition, the type of centre of activities and the availability of qualified staff must be evaluated.



An Act respecting labour standards

An Act respecting labour standards applies to both unionized employees and those who are not subject to a collective agreement. It sets a general limit on the length of work and section 59.0.1 clearly stipulates a right to refuse to work more than the number of hours stipulated. Thus, an employee can exercise her right to refuse to work:

- Daily after:
 - more than 4 hours past her regular hours or more than 14 hours per period of 24 hours, whichever period is shorter;
- Weekly after:
 - more than 50 hours,
 - or
 - more than 60 hours for an employee who works in an isolated area or who works in the James Bay territory.

Two situations limit this right, namely:

- If there is danger for the life, health or safety of the workers or the population;
- If this refusal is contrary to the employee's professional code of ethics.

According to the FIQ, the healthcare professionals are entitled to this right to refuse. However, because they are governed by a code of ethics, they may not just refuse to work and must evaluate the context.

Section 122 (6) prohibits an employer from dismissing, suspending or transferring an employee, practise discrimination or take reprisals against him or impose any other sanction against him when the employee exercises his right to refuse. It is a provision which encourages work-family balance. When the need is foreseeable, an employee who is asked to work overtime at the last minute will be able to demonstrate that she could not make arrangements to organize her time.

The Safe Staffing Form

The FIQ has made a Safe Staffing Form available to their members on their website. This form, to be completed online, allows the healthcare professionals to report the situations or their conditions of practice which hinder them or do not allow them to provide quality, safe and humane care to the patients. Working overtime is a good example of a situation that could be covered by the use of this form.

Although the latter does not replace a grievance, a declaration of a dangerous situation or an incident-accident report, it is a tool that enables actions to be taken to support the demands or the implementation of solutions to counter overtime at the local level.

An Act respecting occupational health and safety

This Act may enable an employee to refuse to work when working, because of its excessive duration, exposes her to a danger for her health, safety or physical integrity or may expose another person to a similar danger. In this context, an employee can also ask for the intervention of a CNESST inspector. This same Act allows the CNESST to determine a maximum duration of work for certain occupations, per day or per week.

Actions that produce results

The overtime problem of is complex and remains at the heart of the concerns of the FIQ. To avoid it, collective action must be taken on several fronts at the local level:

- **Know the health hazards as well as those caused by a state of fatigue which can potentially lead to professional errors;**
- **Document the situations and report them through the Safe Staffing Form, the disengagement forms, requests to a professional order for an inquiry and filing of grievances;**
- **Analyze the problem situations, identify the different possible solutions for taking concrete action and use the committee on care to discuss them as quickly as possible;**
- **Participate in the local action plan to denounce this problem to the greatest extent possible through different means:**
 - letter to the director of nursing or to the director of professional services,
 - letter to the executive director,
 - letter to the board of directors,
 - visibility and mobilization actions,
 - public denunciation of any situation of intimidation,
 - grievance,
 - etc.

These actions have already produced results in some institutions. Therefore, the FIQ encourages their use in order to act locally to put a stop to these situations that harm the working conditions of healthcare professionals and the well-being of the patients.

Quick reference - Overtime

This quick reference will help you to evaluate your capacity to work overtime and to take an enlightened decision.

Note:

1. The date and time of the request to work compulsory or voluntary overtime.
2. The shift concerned.
3. The name of the person who made the request.

Answer the following questions:

1. I have been at work since ____ (time).
2. I had my last meal at ____ (time). I didn't have my last meal ____.
3. I took my last break at ____ (time). I didn't take my last break ____.
4. Today, at the time of the request, I have already worked ____ regular hours.
Today, at the time of the request, I have already worked ____ overtime hours.
Today, at the time of the request, I have already worked ____ compulsory overtime hours.
5. This week, at the time of the request, I have already worked ____ regular hours.
This week, at the time of the request, I have already worked ____ overtime hours.
This week, at the time of the request, I have already worked ____ compulsory overtime hours.
6. At the time of the request, did I have family or parental obligations?
7. I am in charge of ____ patients for the current shift and I will be in charge of ____ for the next shift.
8. The unit is short of resources: Yes No
9. The unit will be short of resources for the next shift: Yes No
10. I evaluate my fatigue and concentration as follows:

11. I feel other symptoms likely to compromise the quality of care and services:

Here, we understand health care.

SUMMARY TABLE OF THE PROCEDURE TO FOLLOW

THE EMPLOYER INFORMS ME THAT I MUST WORK OVERTIME

I EVALUATE:

MY WORKLOAD:

- position
- patients: number, type

MY CONDITION:

- physical and psychological

THE ENVIRONMENT:

- staff on duty
- overflow
- work overload

I CONSIDER THAT I AM FIT TO WORK, BUT I HAVE A VALID REASON TO PRESENT:

- Fortuitous case ("act of God")
- Force majeure
- Family and parental obligations
- Etc.

The employer accepts that I leave

If the employer refuses, I give reasonable notice to find a replacement for me

I CONSIDER THAT I AM NOT FIT TO WORK

If the employer obliges me to stay anyway

The employer accepts that I leave

I give reasonable notice to find a replacement for me

WHEN THE NOTICE EXPIRES, IF NO BACKUP IS ON DUTY TO REPLACE ME:

- I evaluate my situation again: if I leave, could this harm my patients?
- I evaluate the condition of my patients.
- I notify the employer and my colleagues of my departure and report to them on the condition of the patients under my care.
- I record my notes in the file.
- At home, I prepare a written summary of the events and the physical and psychological condition in which I was working.