
SUBSTITUTE HOUSE BILL 1155

AS AMENDED BY THE CONFERENCE COMMITTEE

Passed Legislature - 2019 Regular Session

State of Washington 66th Legislature 2019 Regular Session

By House Appropriations (originally sponsored by Representatives Riccelli, Appleton, Sells, Chapman, Fitzgibbon, Cody, Pellicciotti, Frame, Sullivan, Wylie, Jenkins, Orwall, Valdez, Ortiz-Self, Stonier, Thai, Lovick, Reeves, Doglio, Pollet, Bergquist, Santos, Macri, Goodman, Robinson, and Stanford)

READ FIRST TIME 02/28/19.

1 AN ACT Relating to meal and rest breaks and mandatory overtime
2 for certain health care employees; amending RCW 49.28.130 and
3 49.28.140; adding a new section to chapter 49.12 RCW; and providing
4 an effective date.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 NEW SECTION. **Sec. 1.** A new section is added to chapter 49.12
7 RCW to read as follows:

8 (1) An employer shall provide employees with meal and rest
9 periods as required by law, subject to the following:

10 (a) Rest periods must be scheduled at any point during each work
11 period during which the employee is required to receive a rest
12 period;

13 (b) Employers must provide employees with uninterrupted meal and
14 rest breaks. This subsection (1)(b) does not apply in the case of:

15 (i) An unforeseeable emergent circumstance, as defined in RCW
16 49.28.130; or

17 (ii) A clinical circumstance, as determined by the employee,
18 employer, or employer's designee, that may lead to a significant
19 adverse effect on the patient's condition:

20 (A) Without the knowledge, specific skill, or ability of the
21 employee on break; or

1 (B) Due to an unforeseen or unavoidable event relating to patient
2 care delivery requiring immediate action that could not be planned
3 for by an employer;

4 (c) For any rest break that is interrupted before ten complete
5 minutes by an employer or employer's designee under the provisions of
6 (b)(ii) of this subsection, the employee must be given an additional
7 ten minute uninterrupted rest break at the earliest reasonable time
8 during the work period during which the employee is required to
9 receive a rest period. If the elements of this subsection are met, a
10 rest break shall be considered taken for the purposes of the minimum
11 wage act as defined by chapter 49.46 RCW.

12 (2) The employer shall provide a mechanism to record when an
13 employee misses a meal or rest period and maintain these records.

14 (3) For purposes of this section, the following terms have the
15 following meanings:

16 (a) "Employee" means a person who:

17 (i) Is employed by a health care facility;

18 (ii) Is involved in direct patient care activities or clinical
19 services;

20 (iii) Receives an hourly wage or is covered by a collective
21 bargaining agreement; and

22 (iv) Is a licensed practical nurse or registered nurse licensed
23 under chapter 18.79 RCW, a surgical technologist registered under
24 chapter 18.215 RCW, a diagnostic radiologic technologist or
25 cardiovascular invasive specialist certified under chapter 18.84 RCW,
26 a respiratory care practitioner licensed under chapter 18.89 RCW, or
27 a nursing assistant-certified as defined in RCW 18.88A.020.

28 (b) "Employer" means hospitals licensed under chapter 70.41 RCW,
29 except that the following hospitals are excluded until July 1, 2021:

30 (i) Hospitals certified as critical access hospitals under 42
31 U.S.C. Sec. 1395i-4;

32 (ii) Hospitals with fewer than twenty-five acute care beds in
33 operation; and

34 (iii) Hospitals certified by the centers for medicare and
35 medicaid services as sole community hospitals as of January 1, 2013,
36 that: Have had less than one hundred fifty acute care licensed beds
37 in fiscal year 2011; have a level III adult trauma service
38 designation from the department of health as of January 1, 2014; and
39 are owned and operated by the state or a political subdivision.

1 **Sec. 2.** RCW 49.28.130 and 2011 c 251 s 1 are each amended to
2 read as follows:

3 The definitions in this section apply throughout this section and
4 RCW 49.28.140 and 49.28.150 unless the context clearly requires
5 otherwise.

6 (1) (a) "Employee" means a ((licensed practical nurse or a
7 registered nurse licensed under chapter 18.79 RCW)) person who:

8 (i) Is employed by a health care facility ((who));

9 (ii) Is involved in direct patient care activities or clinical
10 services ((and));

11 (iii) Receives an hourly wage or is covered by a collective
12 bargaining agreement; and

13 (iv) Is either:

14 (A) A licensed practical nurse or registered nurse licensed under
15 chapter 18.79 RCW; or

16 (B) Beginning July 1, 2020, a surgical technologist registered
17 under chapter 18.215 RCW, a diagnostic radiologic technologist or
18 cardiovascular invasive specialist certified under chapter 18.84 RCW,
19 a respiratory care practitioner licensed under chapter 18.89 RCW, or
20 a nursing assistant-certified as defined in RCW 18.88A.020.

21 (b) "Employee" does not mean a person who:

22 (i) Is employed by a health care facility as defined in
23 subsection (3) (a) (v) of this section; and

24 (ii) Is a surgical technologist registered under chapter 18.215
25 RCW, a diagnostic radiologic technologist or cardiovascular invasive
26 specialist certified under chapter 18.84 RCW, a respiratory care
27 practitioner licensed under chapter 18.89 RCW, or a certified nursing
28 assistant as defined in RCW 18.88A.020.

29 (2) "Employer" means an individual, partnership, association,
30 corporation, the state, a political subdivision of the state, or
31 person or group of persons, acting directly or indirectly in the
32 interest of a health care facility.

33 (3) (a) "Health care facility" means the following facilities, or
34 any part of the facility, including such facilities if owned and
35 operated by a political subdivision or instrumentality of the state,
36 that operate on a twenty-four hours per day, seven days per week
37 basis:

38 (i) Hospices licensed under chapter 70.127 RCW;

1 (ii) Hospitals licensed under chapter 70.41 RCW, except that
2 until July 1, 2021, the provisions of section 3, chapter . . . , Laws
3 of 2019 (section 3 of this act) do not apply to:

4 (A) Hospitals certified as critical access hospitals under 42
5 U.S.C. Sec. 1395i-4;

6 (B) Hospitals with fewer than twenty-five acute care beds in
7 operation; and

8 (C) Hospitals certified by the centers for medicare and medicaid
9 services as sole community hospitals as of January 1, 2013, that:
10 Have had less than one hundred fifty acute care licensed beds in
11 fiscal year 2011; have a level III adult trauma service designation
12 from the department of health as of January 1, 2014; and are owned
13 and operated by the state or a political subdivision;

14 (iii) Rural health care facilities as defined in RCW 70.175.020;

15 (iv) Psychiatric hospitals licensed under chapter 71.12 RCW; or

16 (v) Facilities owned and operated by the department of
17 corrections or by a governing unit as defined in RCW 70.48.020 in a
18 correctional institution as defined in RCW 9.94.049 that provide
19 health care services (~~to inmates as defined in RCW 72.09.015~~)).

20 (b) If a nursing home regulated under chapter 18.51 RCW or a home
21 health agency regulated under chapter 70.127 RCW is operating under
22 the license of a health care facility, the nursing home or home
23 health agency is considered part of the health care facility for the
24 purposes of this subsection.

25 (4) "Overtime" means the hours worked in excess of an agreed
26 upon, predetermined, regularly scheduled shift within a twenty-four
27 hour period not to exceed twelve hours in a twenty-four hour period
28 or eighty hours in a consecutive fourteen-day period.

29 (5) "On-call time" means time spent by an employee who is not
30 working on the premises of the place of employment but who is
31 compensated for availability or who, as a condition of employment,
32 has agreed to be available to return to the premises of the place of
33 employment on short notice if the need arises.

34 (6) "Reasonable efforts" means that the employer, to the extent
35 reasonably possible, does all of the following but is unable to
36 obtain staffing coverage:

37 (a) Seeks individuals to volunteer to work extra time from all
38 available qualified staff who are working;

39 (b) Contacts qualified employees who have made themselves
40 available to work extra time;

1 (c) Seeks the use of per diem staff; and

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

6 (7) "Unforeseeable emergent circumstance" means (a) any
7 unforeseen declared national, state, or municipal emergency; (b) when
8 a health care facility disaster plan is activated; or (c) any
9 unforeseen disaster or other catastrophic event which substantially
10 affects or increases the need for health care services.

11 **Sec. 3.** RCW 49.28.140 and 2002 c 112 s 3 are each amended to
12 read as follows:

13 (1) No employee of a health care facility may be required to work
14 overtime. Attempts to compel or force employees to work overtime are
15 contrary to public policy, and any such requirement contained in a
16 contract, agreement, or understanding is void.

17 (2) The acceptance by any employee of overtime is strictly
18 voluntary, and the refusal of an employee to accept such overtime
19 work is not grounds for discrimination, dismissal, discharge, or any
20 other penalty, threat of reports for discipline, or employment
21 decision adverse to the employee.

22 (3) This section does not apply to overtime work that occurs:

23 (a) Because of any unforeseeable emergent circumstance;

24 (b) Because of prescheduled on-call time, subject to the
25 following:

26 (i) Mandatory prescheduled on-call time may not be used in lieu
27 of scheduling employees to work regularly scheduled shifts when a
28 staffing plan indicates the need for a scheduled shift; and

29 (ii) Mandatory prescheduled on-call time may not be used to
30 address regular changes in patient census or acuity or expected
31 increases in the number of employees not reporting for predetermined
32 scheduled shifts;

33 (c) When the employer documents that the employer has used
34 reasonable efforts to obtain staffing. An employer has not used
35 reasonable efforts if overtime work is used to fill vacancies
36 resulting from chronic staff shortages; or

37 (d) When an employee is required to work overtime to complete a
38 patient care procedure already in progress where the absence of the
39 employee could have an adverse effect on the patient.

1 (4) An employee accepting overtime who works more than twelve
2 consecutive hours shall be provided the option to have at least eight
3 consecutive hours of uninterrupted time off from work following the
4 time worked.

5 NEW SECTION. **Sec. 4.** This act takes effect January 1, 2020.

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