

HOUSE BILL REPORT

HB 2601

As Reported by House Committee On:

Commerce & Labor

Title: An act relating to prohibiting health care facilities from requiring employees to perform overtime work.

Brief Description: Prohibiting health care facilities from requiring employees to perform overtime work.

Sponsors: Representatives Cody, Campbell, Conway, Skinner, Wood, McDermott, Ballasiotes, McIntire, Darneille and Ogden.

Brief History:

Committee Activity:

Commerce & Labor: 1/28/02, 2/7/02 [DPS].

Brief Summary of Substitute Bill

- Establishes limits on mandatory overtime for certain health care employees.

HOUSE COMMITTEE ON COMMERCE & LABOR

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 4 members: Representatives Conway, Chair; Wood, Vice Chair; Kenney and Lysen.

Minority Report: Do not pass. Signed by 2 members: Representatives Clements, Ranking Minority Member; and Chandler.

Staff: Chris Cordes (786-7103).

Background:

Both federal and Washington minimum wage laws establish requirements related to overtime work. These laws require covered employees to receive overtime pay for hours worked over 40 hours per week. These laws do not, however, prohibit an employer from requiring employees to work overtime. Other laws establish overtime limits only for certain employees in specified industries, such as truck drivers in the transportation

industry.

Summary of Substitute Bill:

Limits on mandatory overtime are established for certain employees of health care facilities. A health care facility includes a hospital, a hospice, a rural health care facility, and a psychiatric hospital, including those owned and operated by a political subdivision or the state. A nursing home or a home health agency is included if the home or agency is operating under the license of a health care facility.

Mandatory Overtime Limits

Hourly employees involved in direct patient care or clinical services who are employed by a covered public or private health care facility may not be required to work overtime. "Overtime" means work of more than:

- an agreed upon, predetermined, regularly scheduled shift;
- 12 hours in a 24-hour period; or
- 80 hours in a consecutive 14-day period.

Acceptance of overtime beyond these hours must be voluntary. An employee's refusal to accept overtime work is not grounds for discrimination or other employment decision adverse to the employee. The prohibition against mandatory overtime is a minimum employment standard and a contract or agreement that is less favorable to an employee is void.

Exceptions to the Mandatory Overtime Limits

The mandatory overtime limits do not apply:

- to physicians;
- to prescheduled on-call time if such schedules have been customary in the unit or department;
- in unforeseeable emergent circumstances, including an unforeseen national or state emergency, the activation of a health care facility disaster plan, or an unforeseen disaster or catastrophic event that increases the need for health care services; or
- to overtime worked because of unpredictable and unavoidable occurrences if the employer shows that the employer has exhausted reasonable efforts to obtain staffing, including seeking volunteers, contacting qualified individuals who have made themselves available, seeking per diem staff, and seeking personnel from a temporary agency. The employer has not used reasonable efforts if overtime work is used to fill vacancies resulting from chronic short staffing.

Investigation of Complaints and Penalties

The Department of Labor and Industries must investigate complaints of mandatory overtime violations. The department may issue and enforce violations as civil infractions, with penalties of \$1,000 for the first three violations, \$2,500 for a fourth violation, and \$5,000 for each subsequent violation.

Substitute Bill Compared to Original Bill:

The substitute bill: (1) deletes community mental health facilities, kidney disease treatment centers, ambulatory diagnostic or surgical facilities, and drug and alcohol treatment facilities from the definition of "health care facility." Nursing homes and home health agencies are included if the home or agency is operating under the license of a health care facility; (2) defines on-call time and modifies the exclusion for on-call time. On-call time is not subject to the prohibition for overtime work if the on-call time is prescheduled and such prescheduling has been customary in the facility's department or unit; (3) clarifies that "overtime" is either work beyond the prescheduled shift, more than 12 hours in 24 hours, or more than 80 hours in 14 days; (4) allows an additional exclusion for overtime worked because of an unpredictable and unavoidable occurrence if the employer shows that the employer has exhausted reasonable efforts to obtain staffing, including seeking volunteers, contacting qualified individuals who have made themselves available, seeking per diem staff, and seeking personnel from a temporary agency; (5) adds that the prohibition against mandatory overtime is a minimum employment standard and that a contract or agreement that is less favorable to an employee is void; and (6) deletes the misdemeanor penalty for a violation and changes the civil penalty to a civil infraction, with penalties of \$1,000 for the first three violations, \$2,500 for a fourth violation, and \$5,000 for each subsequent violation.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: Ninety days after adjournment of session in which bill is passed.

Testimony For: The health care industry is facing staffing shortages in all areas. When conditions of work are poor, such as when employees are required to work unreasonable overtime, fewer numbers of workers want to enter a health care profession and many current workers end up leaving the profession. Mandatory overtime also endangers patient care because health care professionals are working unreasonably long hours when they feel their judgment could be impaired. Professional staff need to be at their best to exercise good judgment under difficult and complex situations. This requirement for good judgment does not apply only to nurses; for example, complex procedures are being performed in radiology units that traditionally were performed as surgical procedures. It is becoming a common practice to fill staffing needs by working the current staff longer,

which is not a good answer to staffing shortages. Unreasonable overtime also impacts the employee's family obligations. More part-time employees might be willing to accept full-time positions if they knew that their work schedule would be controlled. Health care workers who make bad judgment calls when tired could be subject to malpractice. If an employee exercises their right to refuse overtime, they should be protected against retaliation.

Testimony Against: The problem of staffing shortages and retention are recognized and being studied in a task force. Health care facilities are using innovative recruiting strategies, including recruiting from out-of-country. Overtime is not used to increase profits in the public/nonprofit hospitals. It should not be used as a routine staffing strategy. Many of these facilities are in precarious financial straits. They must remain open 24 hours per day, seven days per week, and must accept all patients. This can create staffing problems. There is a need to reach a compromise that balances the needs of both employees and the health care facilities. A one-size mandate will not work.

Testified: (In support) Sharon Ness; Diane Zahn; Diane Sosne; Scott Canaday; Ann Marie Lionstone; and Kim Armstrong, Louise Kaplan, and Dawn Morell, Washington State Nurses Association.

(Opposed) Troy Hutson and Lisa Thatcher, Washington State Hospital Association; Barbara Trehearne, Group Health Cooperative of Puget Sound; and Tim Brown, Department of Social and Health Services.