
SUBSTITUTE SENATE BILL 5368

State of Washington

59th Legislature

2005 Regular Session

By Senate Committee on Health & Long-Term Care (originally sponsored by Senators Keiser, Benton, Kastama, Thibaudeau, Franklin, McAuliffe and Rasmussen)

READ FIRST TIME 03/01/05.

1 AN ACT Relating to revising the mandatory overtime prohibition
2 applicable to nurses, but only with respect to increasing the types of
3 health care facilities that are subject to the prohibition from
4 requiring nurses to perform overtime work; and amending RCW 49.28.130
5 and 72.01.042.

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

7 **Sec. 1.** RCW 49.28.130 and 2002 c 112 s 2 are each amended to read
8 as follows:

9 The definitions in this section apply throughout this section and
10 RCW 49.28.140 and 49.28.150 unless the context clearly requires
11 otherwise.

12 (1) "Employee" means a licensed practical nurse or a registered
13 nurse licensed under chapter 18.79 RCW employed by a health care
14 facility who is involved in direct patient care activities or clinical
15 services and receives an hourly wage.

16 (2) "Employer" means an individual, partnership, association,
17 corporation, the state (~~(institution)~~), a political subdivision of the
18 state, or person or group of persons, acting directly or indirectly in
19 the interest of a health care facility.

1 (3)(a) "Health care facility" means the following facilities, or
2 any part of the facility, including such facilities if owned and
3 operated by a political subdivision or instrumentality of the state,
4 that operate(~~(s)~~) on a twenty-four hours per day, seven days per week
5 basis:

6 (i) Hospices licensed under chapter 70.127 RCW(~~(7)~~);

7 (ii) Hospitals licensed under chapter 70.41 RCW(~~(7)~~);

8 (iii) Rural health care facilities as defined in RCW 70.175.020(~~(7~~
9 and));

10 (iv) Psychiatric hospitals licensed under chapter 71.12 RCW(~~(7~~
11 and
12 includes such facilities if owned and operated by a political
13 subdivision or instrumentality of the state));

14 (v) State hospitals as defined in RCW 72.23.010;

15 (vi) State veterans' homes as defined in RCW 72.36.035;

16 (vii) The residential habilitation centers listed in RCW
17 71A.20.020, 71A.20.030, and 71A.20.040;

18 (viii) Facilities owned and operated by the department of
19 corrections or by a governing unit as defined in RCW 70.48.020 in a
20 correctional institution as defined in RCW 9.94.049(1) that provide
21 health care services to inmates as defined in RCW 72.09.015 or to jail
22 inmates; and

23 (ix) Facilities in an institution as defined in RCW 13.40.020(12)
24 or a detention facility as defined in RCW 13.40.020(9) that provide
25 health care services to juveniles committed to the custody of the
26 department of social and health services under RCW 13.40.185 or
27 confined in a detention facility.

28 (b) If a nursing home regulated under chapter 18.51 RCW (~~(or a home~~
29 ~~health agency regulated under chapter 70.127 RCW)) is operating under~~
30 the license of a health care facility, the nursing home (~~(or home~~
31 ~~health agency)) is considered part of the health care facility for the~~
32 purposes of this subsection.

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

37 (5) "On-call time" means time spent by an employee who is not
working on the premises of the place of employment but who is

1 compensated for availability or who, as a condition of employment, has
2 agreed to be available to return to the premises of the place of
3 employment on short notice if the need arises.

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

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

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

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

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

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

21 **Sec. 2.** RCW 72.01.042 and 1981 c 136 s 67 are each amended to read
22 as follows:

23 (1)(a) The hours of labor for each full time employee shall be a
24 maximum of eight hours in any work day and forty hours in any work
25 week.

26 (b) Employees required to work in excess of the eight-hour maximum
27 per day or the forty-hour maximum per week shall be compensated by not
28 less than equal hours of compensatory time off or, in lieu thereof, a
29 premium rate of pay per hour equal to not less than one-one hundred and
30 seventy-sixth of the employee's gross monthly salary: PROVIDED, That
31 in the event that an employee is granted compensatory time off, such
32 time off should be given within the calendar year and in the event that
33 such an arrangement is not possible the employee shall be given a
34 premium rate of pay: PROVIDED FURTHER, That compensatory time and/or
35 payment thereof shall be allowed only for overtime as is duly
36 authorized and accounted for under rules and regulations established by
37 the secretary.

1 (2) Overtime requirements for an employee under this section who is
2 also an employee of a health care facility under chapter 49.28 RCW are
3 subject to RCW 49.28.130 through 49.28.150.

--- END ---