
SUBSTITUTE SENATE BILL 5563

State of Washington

61st Legislature

2009 Regular Session

By Senate Labor, Commerce & Consumer Protection (originally sponsored by Senators Franklin, Prentice, Keiser, Pflug, Zarelli, Benton, Kohl-Welles, Pridemore, Kline, and Fairley)

READ FIRST TIME 02/25/09.

1 AN ACT Relating to hours of labor for health care employees;
2 amending RCW 49.28.130 and 49.28.140; and reenacting and amending RCW
3 49.12.187.

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

5 **Sec. 1.** RCW 49.12.187 and 2003 c 401 s 3 and 2003 c 146 s 1 are
6 each reenacted and amended to read as follows:

7 (1) This chapter shall not be construed to interfere with, impede,
8 or in any way diminish the right of employees to bargain collectively
9 with their employers through representatives of their own choosing
10 concerning wages or standards or conditions of employment. However,
11 rules adopted under this chapter regarding appropriate rest and meal
12 periods as applied to employees in the construction trades may be
13 superseded by a collective bargaining agreement negotiated under the
14 national labor relations act, 29 U.S.C. Sec. 151 et seq., if the terms
15 of the collective bargaining agreement covering such employees
16 specifically require rest and meal periods and prescribe requirements
17 concerning those rest and meal periods.

18 (2) Employees of public employers may enter into collective
19 bargaining contracts, labor/management agreements, or other mutually

1 agreed to employment agreements that specifically vary from or
2 supersede, in part or in total, rules adopted under this chapter
3 regarding appropriate rest and meal periods.

4 (3) Employees of health care facilities as those terms are defined
5 in RCW 49.28.130 may enter into collective bargaining contracts,
6 labor/management agreements, or other mutually agreed to employment
7 agreements that specifically vary from or supersede, in part or in
8 total, rules adopted under this chapter regarding appropriate rest and
9 meal periods.

10 **Sec. 2.** RCW 49.28.130 and 2002 c 112 s 2 are each amended to read
11 as follows:

12 The definitions in this section apply throughout this section and
13 RCW 49.28.140 and 49.28.150 unless the context clearly requires
14 otherwise.

15 (1) "Employee" means a person who is (a) a licensed practical nurse
16 or a registered nurse licensed under chapter 18.79 RCW, a surgical
17 technologist registered under chapter 18.215 RCW, a radiologic
18 technologist certified under chapter 18.84 RCW, a diagnostic medical
19 sonographer who produces ultrasonic recordings of internal organs for
20 use by physicians, or a cardiovascular technologist or technician who
21 conducts tests on pulmonary or cardiovascular systems of patients for
22 diagnostic purposes; and (b) employed by a health care facility ((~~who~~
23 is)), involved in direct patient care activities or clinical services,
24 and receives an hourly wage.

25 (2) "Employer" means an individual, partnership, association,
26 corporation, state institution, political subdivision of the state, or
27 person or group of persons, acting directly or indirectly in the
28 interest of a health care facility.

29 (3) "Health care facility" means the following facilities, or any
30 part of the facility, that operates on a twenty-four hours per day,
31 seven days per week basis: Hospices licensed under chapter 70.127 RCW,
32 hospitals licensed under chapter 70.41 RCW, rural health care
33 facilities as defined in RCW 70.175.020, and psychiatric hospitals
34 licensed under chapter 71.12 RCW, and includes such facilities if owned
35 and operated by a political subdivision or instrumentality of the
36 state. If a nursing home regulated under chapter 18.51 RCW or a home
37 health agency regulated under chapter 70.127 RCW is operating under the

1 license of a health care facility, the nursing home or home health
2 agency is considered part of the health care facility for the purposes
3 of this subsection.

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

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

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

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

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

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

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

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

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

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

36 (2) The acceptance by any employee of overtime is strictly
37 voluntary, and the refusal of an employee to accept such overtime work

1 is not grounds for discrimination, dismissal, discharge, or any other
2 penalty, threat of reports for discipline, or employment decision
3 adverse to the employee.

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

5 (a) Because of any unforeseeable emergent circumstance;

6 (b) Because of prescheduled on-call time. Prescheduled on-call
7 time must only be used for unanticipated and immediate patient care
8 emergencies. Prescheduled on-call time may not be used to fill chronic
9 or foreseeable staff shortages. The employer shall document reasonable
10 efforts to obtain staffing to avoid prescheduled on-call time;

11 (c) When the employer documents that the employer has used
12 reasonable efforts to obtain staffing. An employer has not used
13 reasonable efforts if overtime work is used to fill vacancies resulting
14 from chronic staff shortages; or

15 (d) When an employee is required to work overtime to complete a
16 patient care procedure already in progress where the absence of the
17 employee could have an adverse effect on the patient. The employer may
18 not schedule nonemergency procedures that would require overtime.

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