

---

**SENATE BILL 5563**

---

**State of Washington**

**61st Legislature**

**2009 Regular Session**

**By** Senators Franklin, Prentice, Keiser, Pflug, Zarelli, Benton, Kohl-Welles, Pridemore, Kline, and Fairley

Read first time 01/27/09. Referred to Committee on Health & Long-Term Care.

1       AN ACT Relating to hours of labor for health care employees;  
2 amending RCW 49.28.130 and 49.28.140; and adding a new section to  
3 chapter 49.12 RCW.

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

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

7       (1) Because employees of health care facilities are not engaged in  
8 the type of work that allows employees to take intermittent meal and  
9 rest periods in lieu of uninterrupted, scheduled meal and rest periods,  
10 employees of health care facilities must be provided uninterrupted,  
11 scheduled meal and rest periods of a duration no less than that  
12 specified in rules adopted by the department of labor and industries  
13 under this chapter or as otherwise agreed to be provided by the  
14 employer, whichever is longer in duration.

15       (2) The definitions in RCW 49.28.130 apply to this section.

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

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

4 (1) "Employee" means a person who is (a) a licensed practical nurse  
5 or a registered nurse licensed under chapter 18.79 RCW, a surgical  
6 technologist registered under chapter 18.215 RCW, a radiologic  
7 technologist certified under chapter 18.84 RCW, or a cardiovascular  
8 technologist or technician who conduct tests on pulmonary or  
9 cardiovascular systems of patients for diagnostic purposes; and (b)  
10 employed by a health care facility ((who is)), involved in direct  
11 patient care activities or clinical services, and receives an hourly  
12 wage.

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

17 (3) "Health care facility" means the following facilities, or any  
18 part of the facility, that operates on a twenty-four hours per day,  
19 seven days per week basis: Hospices licensed under chapter 70.127 RCW,  
20 hospitals licensed under chapter 70.41 RCW, rural health care  
21 facilities as defined in RCW 70.175.020, and psychiatric hospitals  
22 licensed under chapter 71.12 RCW, and includes such facilities if owned  
23 and operated by a political subdivision or instrumentality of the  
24 state. If a nursing home regulated under chapter 18.51 RCW or a home  
25 health agency regulated under chapter 70.127 RCW is operating under the  
26 license of a health care facility, the nursing home or home health  
27 agency is considered part of the health care facility for the purposes  
28 of this subsection.

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

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

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

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

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

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

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

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

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

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

24 (2) The acceptance by any employee of overtime is strictly  
25 voluntary, and the refusal of an employee to accept such overtime work  
26 is not grounds for discrimination, dismissal, discharge, or any other  
27 penalty, threat of reports for discipline, or employment decision  
28 adverse to the employee.

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

30 (a) Because of any unforeseeable emergent circumstance;

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

36 (c) When the employer documents that the employer has used

1 reasonable efforts to obtain staffing. An employer has not used  
2 reasonable efforts if overtime work is used to fill vacancies resulting  
3 from chronic staff shortages; or

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

--- END ---