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SECOND SUBSTITUTE HOUSE BILL 2501

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State of Washington

62nd Legislature

2012 Regular Session

**By** House General Government Appropriations & Oversight (originally sponsored by Representatives Green, Cody, Jenkins, Ryu, Lytton, Sells, Reykdal, Kirby, Van De Wege, Moeller, Darneille, Miloscia, Santos, and Roberts)

READ FIRST TIME 02/06/12.

1 AN ACT Relating to mandatory overtime for employees of health care  
2 facilities; and amending RCW 49.28.130 and 49.28.140.

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

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

6 The definitions in this section apply throughout this section and  
7 RCW 49.28.140 and 49.28.150 unless the context clearly requires  
8 otherwise.

9 (1)(a) "Employee" means a ~~((licensed practical nurse or a  
10 registered nurse licensed under chapter 18.79 RCW))~~ person who:

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

12 (ii) Is involved in direct patient care activities or clinical  
13 services ((and));

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

16 (iv) Is a licensed practical nurse or registered nurse licensed  
17 under chapter 18.79 RCW, a surgical technologist registered under  
18 chapter 18.215 RCW, a diagnostic radiologic technologist or

1 cardiovascular invasive specialist certified under chapter 18.84 RCW,  
2 a respiratory care practitioner licensed under chapter 18.89 RCW, or a  
3 certified nursing assistant as defined in RCW 18.88A.020.

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

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

7 (ii) Is a surgical technologist registered under chapter 18.215  
8 RCW, a diagnostic radiologic technologist or cardiovascular invasive  
9 specialist certified under chapter 18.84 RCW, a respiratory care  
10 practitioner licensed under chapter 18.89 RCW, or a certified nursing  
11 assistant as defined in RCW 18.88A.020.

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

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

20 (i) Hospices licensed under chapter 70.127 RCW;

21 (ii) Hospitals licensed under chapter 70.41 RCW;

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

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

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

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 the  
30 license of a health care facility, the nursing home or home health  
31 agency is considered part of the health care facility for the purposes  
32 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  
38 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 49.28.140 and 2002 c 112 s 3 are each amended to read  
22 as follows:

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

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

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

33 (a) Because of any unforeseeable emergent circumstance;

34 (b) Because of prescheduled on-call time necessary for immediate  
35 and unanticipated patient care emergencies. The employer may not use  
36 prescheduled on-call time to fill chronic or foreseeable staff  
37 shortages;

1           (c) When the employer documents that the employer has used  
2 reasonable efforts to obtain staffing. An employer has not used  
3 reasonable efforts if overtime work is used to fill vacancies resulting  
4 from chronic staff shortages; or

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

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