
HOUSE BILL 2501

State of Washington

62nd Legislature

2012 Regular Session

By Representatives Green, Cody, Jinkins, Ryu, Lytton, Sells, Reykdal, Kirby, Van De Wege, Moeller, Darneille, Miloscia, Santos, and Roberts

Read first time 01/16/12. Referred to Committee on Labor & Workforce Development.

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

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

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

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

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

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

12 (i) Hospices licensed under chapter 70.127 RCW;

13 (ii) Hospitals licensed under chapter 70.41 RCW;

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

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

16 (v) Facilities owned and operated by the department of corrections
17 or by a governing unit as defined in RCW 70.48.020 in a correctional
18 institution as defined in RCW 9.94.049 that provide health care
19 services ~~((to inmates as defined in RCW 72.09.015))~~; and

20 (vi) State veterans' homes as defined in RCW 72.36.035.

21 (b) If a nursing home regulated under chapter 18.51 RCW or a home
22 health agency regulated under chapter 70.127 RCW is operating under the
23 license of a health care facility, the nursing home or home health
24 agency is considered part of the health care facility for the purposes
25 of this subsection.

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

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

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

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

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

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

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

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

15 **Sec. 2.** RCW 49.28.140 and 2002 c 112 s 3 are each amended to read
16 as follows:

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

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

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

27 (a) Because of any unforeseeable emergent circumstance;

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

32 (c) When the employer documents that the employer has used
33 reasonable efforts to obtain staffing. An employer has not used
34 reasonable efforts if overtime work is used to fill vacancies resulting
35 from chronic staff shortages; or

36 (d) When an employee is required to work overtime to complete a

1 patient care procedure already in progress where the absence of the
2 employee could have an adverse effect on the patient. The employer may
3 not schedule nonemergency procedures that would require overtime.

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