

SENATE BILL REPORT

HB 1715

As of March 23, 2017

Title: An act relating to meal and rest breaks and mandatory overtime for certain health care employees.

Brief Description: Addressing meal and rest breaks and mandatory overtime for certain health care employees.

Sponsors: Representatives Riccelli, Gregerson, McBride, Stonier, Wylie, Pollet, Cody, Ryu, Goodman, Morris, Fitzgibbon, Sullivan, Lytton, Tharinger, Chapman, Peterson, Lovick, Senn, Hansen, Sells, Frame, Doglio, Bergquist, Sawyer, Macri, Jinkins, Dolan, Stanford, Orwall, Ortiz-Self, Farrell, Slatter, Tarleton, Springer, Fey, Kilduff, Reeves, Pettigrew, Appleton, Robinson, Blake, Kagi, Ormsby, Pellicciotti, Kloba, Hudgins and Santos.

Brief History: Passed House: 3/07/17, 55-42.

Committee Activity: Commerce, Labor & Sports: 3/23/17.

Brief Summary of Bill

- Provides that certain hospital employees must be allowed to take uninterrupted meal and rest periods that are not intermittent, except under limited circumstances.
- Amends the prohibition on mandatory overtime in health care facilities by (1) including additional employees, (2) prohibiting the employer from using prescheduled on-call time to fill foreseeable staff shortages, and (3) making other changes.

SENATE COMMITTEE ON COMMERCE, LABOR & SPORTS

Staff: Richard Rodger (786-7461)

Background: Meal and Rest Periods. The Department of Labor and Industries (L&I) establishes, by rule, requirements for meal and rest breaks for employees. Employees working over five hours must be allowed to take a 30-minute meal period. Meal periods may be unpaid if the employee is completely relieved from their duties during the meal period. Meal periods are on the employer's time if the employee must remain on the premises and act in the interest of the employer.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Regarding rest periods, employees must receive a rest period of at least ten minutes for each four-hour period worked. Rest periods are on the employer's time. The rest period must be allowed no later than the end of the third hour worked.

When the nature of the work allows, employees may take intermittent rest periods that add up to ten minutes. L&I's administrative policy describes intermittent rest periods as intervals of short duration in which employees are allowed to rest and can include personal activities such as making personal telephone calls, attending to personal business, and eating a snack. L&I is currently in the process of considering amending its administrative policy on intermittent rest breaks for nonagricultural workers.

Overtime. Health care facilities are prohibited from requiring certain employees to work overtime. Employees may voluntarily agree to work overtime, but cannot be required to do so or be retaliated against for refusing. The employees covered by this provision are licensed practical nurses and registered nurses, who are involved in direct patient care activities or clinical services and receive an hourly wage.

The mandatory overtime prohibition does not apply to work that occurs:

- because of any unforeseeable emergent circumstance;
- because of prescheduled on-call time;
- when the employer has used reasonable efforts to obtain staffing; or
- when an employee must work overtime to complete a patient care procedure already in progress where it would be detrimental to the patient if the employee left.

The health care facilities covered by this mandatory overtime prohibition are:

- hospices;
- hospitals;
- rural health care facilities;
- certain psychiatric hospitals; and
- facilities owned or operated by prisons and jails that provide health care services to inmates in the custody of the Department of Corrections.

Summary of Bill: Meal and Rest Periods. A hospital must provide certain employees with meal and rest periods as required by law, except that:

- rest periods may be taken at any point in the work period; and
- meal and rest periods must be uninterrupted, and the employer may not require the employee to take intermittent meal or rest periods.

However, a meal or rest period may be interrupted where there is an unforeseeable emergent circumstance or a clinical circumstance that may lead to patient harm without the employee's specific skill or expertise.

The hospital must record when an employee takes or misses a meal or rest period and maintain the records as required by L&I.

Employees covered by these provisions are licensed practical nurses, registered nurses, surgical technologists, diagnostic radiologic technologists, cardiovascular invasive specialists, respiratory care practitioners, and certified nursing assistants who:

- are involved in direct patient care activities or clinical services; and
- receive an hourly wage or are covered by a collective bargaining agreement.

Overtime. The mandatory overtime restrictions are expanded to apply to the same groups of employees covered under the meal and rest period provisions. However, for facilities owned and operated by prisons and jails, the restrictions apply only to licensed practical nurses and registered nurses.

Employers may not use prescheduled on-call time to fill chronic or foreseeable staff shortages.

The exceptions to the overtime prohibition are amended. The exception for prescheduled on-call time applies only if it is necessary for immediate and unanticipated patient care emergencies. The exception for procedures in progress is amended to provide that employers may not schedule nonemergency procedures that would require overtime.

For health care facilities owned and operated by prisons and jails, the requirement that the facility provide care "to inmates" in state custody is deleted.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: RN's catch 86 percent of medication errors. We are understaffed and overworked and need to have uninterrupted breaks to ensure patient safety. We shouldn't have to resort to litigation to obtain our meal and rest breaks. We often have to go without food, water, and bathroom breaks to ensure our patients receive adequate care. Hospitals use the on-call loophole to avoid the prohibition on mandatory overtime.

CON: We agree that nurses need meal and rest breaks, but this one-size-fits-all solution doesn't work for all the facilities. This is especially true in small, rural hospitals where we have small operating margins and a shortage of nurses. The bill, while not funded by the state General Fund, will require additional staffing that someone will have to pay for. Hospitals need to maintain an on-call staffing model for emergencies or else the patients will be affected.

Persons Testifying: PRO: Representative Marcus Riccelli, Prime Sponsor; Danielle O'Toole, Washington State Nurses Association; Ron Cole, RN - SMC Cherry Hill; Sally Watkins, RN; Suzanne Woodard, RN; Marie Windhorn, RN; Chris Barton, SEIU Healthcare 1199NW - Nurse Alliance Director.

CON: Dana Nelson-Peterson, Virginia Mason; Robert Bennington, Mason General; Lisa Thatcher, WSHA.

Persons Signed In To Testify But Not Testifying: No one.