

SENATE BILL REPORT

HB 1715

As of February 24, 2018

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; 1/11/18, 56-42.

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

Labor & Commerce: 2/15/18, 2/21/18 [DP-WM, DNP].

Ways & Means: 2/24/18.

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)

SENATE COMMITTEE ON LABOR & COMMERCE

Majority Report: Do pass and be referred to Committee on Ways & Means.

Signed by Senators Keiser, Chair; Hasegawa, Vice Chair; Conway, Kuderer and Saldaña.

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.

Minority Report: Do not pass.
Signed by Senators Braun, King and Wilson.

Staff: Richard Rodger (786-7461)

SENATE COMMITTEE ON WAYS & MEANS

Staff: Amanda Cecil (786-7460)

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.

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 (Commerce, Labor & Sports): *Testimony from 2017 Regular Session.* PRO: Registered nurses catch 86 percent of medication errors. We are understaffed and overworked and need to have uninterrupted breaks to ensure patient safety. We should not 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 does not 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 (Commerce, Labor & Sports): 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 (Commerce, Labor & Sports): No one.

Staff Summary of Public Testimony (Labor & Commerce): PRO: Our nurses and staff are not taking their breaks when there is insufficient coverage to ensure they do not leave the patients without adequate care and to avoid putting the burden on their co-workers. I have been placed on call for over 100 hours at a time and ended up working 40 hours in three days while having to catch some sleep in a closet. I have also had to ask a surgeon to pause a surgery so I could use the bathroom. We are forced to work overtime everyday, especially during spring breaks and during the summers. I have had to work 16-18 hour shifts and only get a three-hour break in-between. Missed rest breaks and meals increases errors and harms patient safety. Our hospital recently negotiated breaks and meals like the provisions contained in the legislation. The breaks make a profound difference, improving patient outcomes and reducing burnout by our nurses and staff. Patients should not have to rely on piecemeal lawsuits and collective bargaining agreements to ensure a safe health care system.

CON: This bill will create dangerous and unanticipated consequences for patient safety and will reduce access to health care. Hospitals frequently have unscheduled needs after regular hours are over; especially in the emergency rooms, radiology, labor/delivery, hospice, and cath labs. We are already having a difficult time staffing with the current, high number of flu cases with both our patients and our staff. We already have unfilled positions and a RN vacancy rate of 23 percent. When our patients get bumped by emergency cases, their case is not considered emergent even though they can be urgent cases that have been bumped several times. The bill ignores the complexity of the situation and imposes rigid structures that will reduce nurses flexibility. L&I has a process to review the question of intermittent breaks and did not recommend changes for hospitals. The bill will create unreasonable burdens on our staff. Small, critical care hospitals will be required to have double the staff to cover the breaks required by the bill.

OTHER: L&I does investigate all complaints filed. Administrative rules do allow intermittent breaks in certain situations. We expect the bill will require the UW hospital

system to hire additional nurses and staff to cover the breaks required by the bill, at a cost of \$28 million per biennium. We recently negotiated a pilot project to change how breaks are provided, at the cost of \$2.5 million.

Persons Testifying (Labor & Commerce): PRO: Representative Marcus Riccelli, Prime Sponsor; Sabrina Snow, SEIU Healthcare 1199NW; Karmann Valentine, UFCW 21; Ingrid Anderson, WSNA.

CON: Alison Bradywood, Virginia Mason; Ann Goeson, PeaceHealth Director of Clinical Services, United General; Kara Young, ICU staff nurse, Confluence Health; Tracy Kasnic, Confluence Health/CNO; Roman Daniels-Brown, WSMA; Lisa Thatcher, WSHA.

OTHER: Tammy Fellin, Labor and Industries; Ian Goodhew, UW Medicine Health System.

Persons Signed In To Testify But Not Testifying (Labor & Commerce): No one.

Staff Summary of Public Testimony (Ways & Means): PRO: The fiscal note assumes that no nurses are provided uninterrupted breaks now, but that is not accurate. Many nurses at UW hospitals get uninterrupted breaks based on an arbitration award. This should be the norm at all hospitals. This is a critical patient safety issue. Fatigue in hospitals is dangerous for patients. These issues are also addressed at the bargaining table, but issues of public safety should be addressed statewide.

CON: UW Medicine wants nurses to receive meal and rest breaks but needs flexibility to work breaks around patient needs. This has been piloted at Harborview and it has cost \$2.5 million. Costs at other hospitals are based on the pilot that UW Medicine did at Harborview and extrapolated costs. This means hiring more nurses and there is already a nurse shortage.

Persons Testifying (Ways & Means): PRO: Lindsey Grad, SEIU Healthcare 1199NW; Rebecca Johnson, UFCW 21; Justin Gill, WSNA.

CON: Ian Goodhew, University of Washington; Lisa Thatcher, Washington State Hospital Association.

Persons Signed In To Testify But Not Testifying (Ways & Means): No one.