

SSB 5190 - S AMD 397
By Senator Rivers

NOT CONSIDERED 12/23/2019

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** A new section is added to chapter 49.12
4 RCW to read as follows:

5 (1) An employer shall provide employees with meal and rest
6 periods as required by law, subject to the following:

7 (a) Rest periods may be taken at any point during each work
8 period during which the employee is required to receive a rest
9 period; and

10 (b) Meal and rest periods must be uninterrupted, and an employer
11 may not require an employee to take intermittent meal or rest
12 periods. This subsection (1)(b) does not apply when there is:

13 (i) An unforeseeable emergent circumstance, as defined in RCW
14 49.28.130; or

15 (ii) A clinical circumstance that may lead to patient harm
16 without the specific skill or expertise of the employee taking a meal
17 or rest period, or that raises the acuity of the unit to which the
18 employee is assigned such that the employee is needed back from break
19 to avoid patient harm.

20 (2) The employer shall record when an employee takes or misses a
21 meal or rest period and maintain these records as required by the
22 department.

23 (3) For purposes of this section, the following terms have the
24 following meanings:

25 (a) "Employee" means a person who:

26 (i) Is employed by a health care facility;

27 (ii) Is involved in direct patient care activities or clinical
28 services;

29 (iii) Receives an hourly wage or is covered by a collective
30 bargaining agreement;

31 (iv) Is a licensed practical nurse or registered nurse licensed
32 under chapter 18.79 RCW, a surgical technologist registered under

1 chapter 18.215 RCW, a diagnostic radiologic technologist or
2 cardiovascular invasive specialist certified under chapter 18.84 RCW,
3 a respiratory care practitioner licensed under chapter 18.89 RCW, or
4 a nursing assistant-certified as defined in RCW 18.88A.020; and

5 (v) Does not work in the postanesthesia department of any
6 hospital licensed under chapter 70.41 RCW.

7 (b) "Employer" means hospitals licensed under chapter 70.41 RCW.

8 **Sec. 2.** RCW 49.28.130 and 2011 c 251 s 1 are each amended to
9 read as follows:

10 The definitions in this section apply throughout this section and
11 RCW 49.28.140 and 49.28.150 unless the context clearly requires
12 otherwise.

13 (1) (a) "Employee" means a ((licensed practical nurse or a
14 registered nurse licensed under chapter 18.79 RCW)) person who:

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

16 (ii) Is involved in direct patient care activities or clinical
17 services ((and));

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

20 (iv) Is a licensed practical nurse or registered nurse licensed
21 under chapter 18.79 RCW, a surgical technologist registered under
22 chapter 18.215 RCW, a diagnostic radiologic technologist or
23 cardiovascular invasive specialist certified under chapter 18.84 RCW,
24 a respiratory care practitioner licensed under chapter 18.89 RCW, or
25 a certified nursing assistant as defined in RCW 18.88A.020.

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

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

29 (ii) Is a surgical technologist registered under chapter 18.215
30 RCW, a diagnostic radiologic technologist or cardiovascular invasive
31 specialist certified under chapter 18.84 RCW, a respiratory care
32 practitioner licensed under chapter 18.89 RCW, or a certified nursing
33 assistant as defined in RCW 18.88A.020.

34 (2) "Employer" means an individual, partnership, association,
35 corporation, the state, a political subdivision of the state, or
36 person or group of persons, acting directly or indirectly in the
37 interest of a health care facility.

38 (3) (a) "Health care facility" means the following facilities, or
39 any part of the facility, including such facilities if owned and

1 operated by a political subdivision or instrumentality of the state,
2 that operate on a twenty-four hours per day, seven days per week
3 basis:

4 (i) Hospices licensed under chapter 70.127 RCW;

5 (ii) Hospitals licensed under chapter 70.41 RCW;

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

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

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

12 (b) If a nursing home regulated under chapter 18.51 RCW or a home
13 health agency regulated under chapter 70.127 RCW is operating under
14 the license of a health care facility, the nursing home or home
15 health agency is considered part of the health care facility for the
16 purposes of this subsection.

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

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

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

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

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

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

34 (d) Seeks personnel from a contracted temporary agency when such
35 staffing is permitted by law or an applicable collective bargaining
36 agreement, and when the employer regularly uses a contracted
37 temporary agency.

38 (7) "Unforeseeable emergent circumstance" means (a) any
39 unforeseen declared national, state, or municipal emergency; (b) when
40 a health care facility disaster plan is activated; or (c) any

1 unforeseen disaster or other catastrophic event which substantially
2 affects or increases the need for health care services.

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

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

9 (2) The acceptance by any employee of overtime is strictly
10 voluntary, and the refusal of an employee to accept such overtime
11 work is not grounds for discrimination, dismissal, discharge, or any
12 other penalty, threat of reports for discipline, or employment
13 decision adverse to the employee.

14 (3) The employer may not use prescheduled on-call time to fill
15 chronic or foreseeable staff shortages.

16 (4) This section does not apply to overtime work that occurs:

17 (a) Because of any unforeseeable emergent circumstance;

18 (b) Because of prescheduled on-call time necessary for immediate
19 and unanticipated patient care emergencies;

20 (c) When the employer documents that the employer has used
21 reasonable efforts to obtain staffing. An employer has not used
22 reasonable efforts if overtime work is used to fill vacancies
23 resulting from chronic staff shortages; or

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

28 (5) This section does not apply to sexual assault nurse examiners
29 who work on a prescheduled on-call basis.

30 NEW SECTION. **Sec. 4.** A new section is added to chapter 49.12
31 RCW to read as follows:

32 Pursuant to RCW 49.12.105, an employer may apply to the director
33 for a variance of the elements of chapter . . . , Laws of 2019 (this
34 act)."

NOT CONSIDERED 12/23/2019

1 On page 1, line 2 of the title, after "employees;" strike the
2 remainder of the title and insert "amending RCW 49.28.130 and
3 49.28.140; and adding new sections to chapter 49.12 RCW."

EFFECT: Exempts postanesthesia departments of hospitals from the uninterrupted meal and rest break requirements.

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