
HOUSE BILL 2181

State of Washington

66th Legislature

2019 Regular Session

By Representative Riccelli

1 AN ACT Relating to addressing certain health care employees' work
2 schedules by clarifying meal and rest breaks at all hospitals
3 licensed under chapter 70.41 RCW for licensed practical nurses,
4 registered nurses, surgical technologists, diagnostic radiologic
5 technologists, cardiovascular invasive specialists, respiratory care
6 practitioners, and certified nursing assistants, and modifying
7 mandatory overtime restrictions for licensed practical nurses,
8 registered nurses, surgical technologists, diagnostic radiologic
9 technologists, cardiovascular invasive specialists, respiratory care
10 practitioners, and certified nursing assistants; amending RCW
11 49.28.130 and 49.28.140; adding a new section to chapter 49.12 RCW;
12 and providing an effective date.

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

14 NEW SECTION. **Sec. 1.** A new section is added to chapter 49.12
15 RCW to read as follows:

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

18 (a) Rest periods must be scheduled at any point during each work
19 period during which the employee is required to receive a rest
20 period;

1 (b) Employers must provide employees with uninterrupted meal and
2 rest breaks. This subsection (1)(b) does not apply in the case of:

3 (i) An unforeseeable emergent circumstance, as defined in RCW
4 49.28.130; or

5 (ii) A clinical circumstance, as determined by the employee,
6 employer, or employer's designee, that may lead to a significant
7 adverse effect on the patient's condition:

8 (A) Without the knowledge, specific skill, or ability of the
9 employee on break; or

10 (B) Due to an unforeseen or unavoidable event relating to patient
11 care delivery requiring immediate action that could not be planned
12 for by an employer;

13 (c) For any rest break that is interrupted before ten complete
14 minutes by an employer or employer's designee under the provisions of
15 (b)(ii) of this subsection, the employee must be given an additional
16 ten minute uninterrupted rest break at the earliest reasonable time
17 during the work period during which the employee is required to
18 receive a rest period. If the elements of this subsection are met, a
19 rest break shall be considered taken for the purposes of the minimum
20 wage act as defined by chapter 49.46 RCW.

21 (2) The employer shall provide a mechanism to record when an
22 employee misses a meal or rest period and maintain these records.

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; and

31 (iv) Is a licensed practical nurse or registered nurse licensed
32 under chapter 18.79 RCW, a surgical technologist registered under
33 chapter 18.215 RCW, a diagnostic radiologic technologist or
34 cardiovascular invasive specialist certified under chapter 18.84 RCW,
35 a respiratory care practitioner licensed under chapter 18.89 RCW, or
36 a nursing assistant-certified as defined in RCW 18.88A.020.

37 (b) "Employer" means hospitals licensed under chapter 70.41 RCW,
38 except that hospitals certified as a critical access hospital under
39 42 U.S.C. Sec. 1395i-4 or hospitals with fewer than twenty-five acute
40 care beds in operation are excluded until July 1, 2020.

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

3 The definitions in this section apply throughout this section and
4 RCW 49.28.140 and 49.28.150 unless the context clearly requires
5 otherwise.

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

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

9 (ii) Is involved in direct patient care activities or clinical
10 services ((and));

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

13 (iv) Is either:

14 (A) A licensed practical nurse or registered nurse licensed under
15 chapter 18.79 RCW; or

16 (B) Beginning July 1, 2020, a surgical technologist registered
17 under chapter 18.215 RCW, a diagnostic radiologic technologist or
18 cardiovascular invasive specialist certified under chapter 18.84 RCW,
19 a respiratory care practitioner licensed under chapter 18.89 RCW, or
20 a nursing assistant-certified as defined in RCW 18.88A.020.

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

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

24 (ii) Is a surgical technologist registered under chapter 18.215
25 RCW, a diagnostic radiologic technologist or cardiovascular invasive
26 specialist certified under chapter 18.84 RCW, a respiratory care
27 practitioner licensed under chapter 18.89 RCW, or a certified nursing
28 assistant as defined in RCW 18.88A.020.

29 (2) "Employer" means an individual, partnership, association,
30 corporation, the state, a political subdivision of the state, or
31 person or group of persons, acting directly or indirectly in the
32 interest of a health care facility.

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

38 (i) Hospices licensed under chapter 70.127 RCW;

39 (ii) Hospitals licensed under chapter 70.41 RCW, except that
40 until July 1, 2020, the provisions of section 3, chapter . . . , Laws

1 of 2019 (section 3 of this act) do not apply to hospitals certified
2 as a critical access hospital under 42 U.S.C. Sec. 1395i-4 or
3 hospitals with fewer than twenty-five acute care beds in operation;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13 (a) Because of any unforeseeable emergent circumstance;

14 (b) Because of prescheduled on-call time, subject to the
15 following:

16 (i) Mandatory prescheduled on-call time may not be used in lieu
17 of scheduling employees to work regularly scheduled shifts when a
18 staffing plan indicates the need for a scheduled shift; and

19 (ii) Mandatory prescheduled on-call time may not be used to
20 address regular changes in patient census or acuity or expected
21 increases in the number of employees not reporting for predetermined
22 scheduled shifts;

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

27 (d) When an employee is required to work overtime to complete a
28 patient care procedure already in progress where the absence of the
29 employee could have an adverse effect on the patient.

30 (4) An employee accepting overtime who works more than twelve
31 consecutive hours shall be provided the option to have at least eight
32 consecutive hours of uninterrupted time off from work following the
33 time worked.

34 NEW SECTION. **Sec. 4.** This act takes effect January 1, 2020.

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