

HOUSE BILL REPORT

HB 1715

As Passed House:

March 7, 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:

Committee Activity:

Labor & Workplace Standards: 2/7/17, 2/14/17 [DP];

Appropriations: 2/23/17, 2/24/17 [DP].

Floor Activity:

Passed House: 3/7/17, 55-42.

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 including additional employees, prohibiting the employer from using prescheduled on-call time to fill foreseeable staff shortages, and making other changes.

HOUSE COMMITTEE ON LABOR & WORKPLACE STANDARDS

Majority Report: Do pass. Signed by 5 members: Representatives Sells, Chair; Gregerson, Vice Chair; McCabe, Assistant Ranking Minority Member; Doglio and Frame.

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 2 members: Representatives Manweller, Ranking Minority Member; Pike.

Staff: Trudes Tango (786-7384).

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: Do pass. Signed by 18 members: Representatives Ormsby, Chair; Robinson, Vice Chair; Bergquist, Cody, Fitzgibbon, Hansen, Hudgins, Jinkins, Kagi, Lytton, Pettigrew, Pollet, Sawyer, Senn, Springer, Stanford, Sullivan and Tharinger.

Minority Report: Do not pass. Signed by 14 members: Representatives Chandler, Ranking Minority Member; MacEwen, Assistant Ranking Minority Member; Stokesbary, Assistant Ranking Minority Member; Buys, Caldier, Haler, Harris, Manweller, Nealey, Schmick, Taylor, Vick, Volz and Wilcox.

Staff: David Pringle (786-7310).

Background:

Meal and Rest Periods.

The Department of Labor and Industries (Department) 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 his or her 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 10 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 10 minutes. The Department'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. The Department 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 the Department.

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.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony (Labor & Workplace Standards):

(In support) Health care workers should not have to go on strike to get basic accommodations like meal and rest breaks. Most frontline staff are working 12-hour shifts, and this bill will ensure that hospitals are staffed at adequate levels and workers get real breaks. Providing nursing care includes using expert judgment and advocating patient care. It is difficult for nurses to use the "buddy system" to relieve each other during breaks. Using this system would mean a nurse doubling up on the patient workload. This issue has been raised in collective bargaining but employers do not always comply with agreements. One nurses association had to file a lawsuit against the employer to be able to get breaks. Some hospitals have "break nurses" but there is no commitment to have break nurses when there is short staffing. Fatigue and the burn out of nurses results in poor patient outcomes and high turnover of nurses. Nurses are not taking their breaks because they do not want to leave their patients without any coverage, but then the nurses are accused of having poor time management. Prescheduled on-call time is different than filling chronic staffing shortages, but nurses are being put on-call to fill those gaps, which is not an appropriate use of on-call.

(Opposed) Hospitals are open 24 hours a day, seven days a week, and they are dynamic changing environments. Overlaying a rigid structure onto a system that is dynamic will lead to unintended consequences on patients. To have uninterrupted breaks means you have to have scheduled time, and hospitals need to remain flexible. Surgical schedules depend on the patients' critical needs. Employers need to be able to pull in on-call nurses and need to be able to use prescheduled on-call procedures. The one-size-fits-all approach in this bill does not work for small rural facilities. In small facilities, the employees all collaborate across the departments to help each other. This bill would increase costs for all hospitals, but would make it especially difficult and costly for small rural hospitals.

Staff Summary of Public Testimony (Appropriations):

(In support) The costs of this bill are not from the General Fund. There has been testimony stating that employees are already receiving uninterrupted breaks, and if that is true, this bill should not have so much cost. The University of Washington is already supposed to be

conforming with the requirements of this bill because of an earlier agreement, so it is hard to understand why they would report these impacts.

(Opposed) Meal and rest breaks are already heavily regulated and are also collectively bargained. It is the requirement in the bill that breaks be uninterrupted and scheduled that drives the costs in the bill. The number of workers that would be covered by the assured uninterrupted breaks requirement is large, and so are the costs that would be imposed upon hospitals.

Persons Testifying (Labor & Workplace Standards): (In support) Representative Riccelli, prime sponsor; Jane Hopkins, Service Employee International Union 1199 Northwest; Samantha Grad, United Food and Commercial Workers Local 21; and Danielle O'Toole and Ann Tan Piazza, Washington State Nurses Association.

(Opposed) Melissa Strong, Mason General Hospital; Dana Nelson-Peterson, Virginia Mason Hospital; and Lisa Thatcher, Washington State Hospital Association.

Persons Testifying (Appropriations): (In support) Lindsey Grad, Service Employees International Union Healthcare 1199NW; and Melissa Johnson, Washington State Nurses Association.

(Opposed) Lisa Thatcher, Washington State Hospital Association.

Persons Signed In To Testify But Not Testifying (Labor & Workplace Standards): None.

Persons Signed In To Testify But Not Testifying (Appropriations): None.