

SHB 1155 - S AMD 668
By Senator Dhingra

ADOPTED AS AMENDED 04/16/2019

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 must be scheduled at any point during each work
8 period during which the employee is required to receive a rest
9 period;

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

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

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

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

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

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

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

1 (3) The definitions in this subsection apply throughout this
2 section unless the context clearly requires otherwise.

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

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

5 (ii) Is involved in direct patient care activities or clinical
6 services;

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

9 (iv) Is a licensed practical nurse or registered nurse licensed
10 under chapter 18.79 RCW, a surgical technologist registered under
11 chapter 18.215 RCW, a diagnostic radiologic technologist or
12 cardiovascular invasive specialist certified under chapter 18.84 RCW,
13 a respiratory care practitioner licensed under chapter 18.89 RCW, or
14 a nursing assistant-certified as defined in RCW 18.88A.020.

15 (b) "Employer" means hospitals licensed under chapter 70.41 RCW,
16 except that hospitals certified as a critical access hospital under
17 42 U.S.C. Sec. 1395i-4 or hospitals with fewer than twenty-five acute
18 care beds in operation are excluded until July 1, 2020.

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

21 The definitions in this section apply throughout this section and
22 RCW 49.28.140 and 49.28.150 unless the context clearly requires
23 otherwise.

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

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

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

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; and

33 (v) Beginning July 1, 2020, is a surgical technologist registered
34 under chapter 18.215 RCW, a diagnostic radiologic technologist or
35 cardiovascular invasive specialist certified under chapter 18.84 RCW,
36 a respiratory care practitioner licensed under chapter 18.89 RCW, or
37 a nursing assistant-certified as defined in RCW 18.88A.020.

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

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

3 (ii) Is a surgical technologist registered under chapter 18.215
4 RCW, a diagnostic radiologic technologist or cardiovascular invasive
5 specialist certified under chapter 18.84 RCW, a respiratory care
6 practitioner licensed under chapter 18.89 RCW, or a certified nursing
7 assistant as defined in RCW 18.88A.020.

8 (2) "Employer" means an individual, partnership, association,
9 corporation, the state, a political subdivision of the state, or
10 person or group of persons, acting directly or indirectly in the
11 interest of a health care facility.

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

17 (i) Hospices licensed under chapter 70.127 RCW;

18 (ii) Hospitals licensed under chapter 70.41 RCW, except that
19 until July 1, 2020, the provisions of section 3, chapter . . . , Laws
20 of 2019 (section 3 of this act) do not apply to hospitals certified
21 as a critical access hospital under 42 U.S.C. Sec. 1395i-4 or
22 hospitals with fewer than twenty-five acute care beds in operation;

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

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

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

29 (b) If a nursing home regulated under chapter 18.51 RCW or a home
30 health agency regulated under chapter 70.127 RCW is operating under
31 the license of a health care facility, the nursing home or home
32 health agency is considered part of the health care facility for the
33 purposes of this subsection.

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

38 (5) "On-call time" means time spent by an employee who is not
39 working on the premises of the place of employment but who is
40 compensated for availability or who, as a condition of employment,

1 has agreed to be available to return to the premises of the place of
2 employment on short notice if the need arises.

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

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

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

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

11 (d) Seeks personnel from a contracted temporary agency when such
12 staffing is permitted by law or an applicable collective bargaining
13 agreement, and when the employer regularly uses a contracted
14 temporary agency.

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

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

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

26 (2) The acceptance by any employee of overtime is strictly
27 voluntary, and the refusal of an employee to accept such overtime
28 work is not grounds for discrimination, dismissal, discharge, or any
29 other penalty, threat of reports for discipline, or employment
30 decision adverse to the employee.

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

32 (a) Because of any unforeseeable emergent circumstance;

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

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

38 (ii) Mandatory prescheduled on-call time may not be used to
39 address regular changes in patient census or acuity or expected

1 increases in the number of employees not reporting for predetermined
2 scheduled shifts;

3 (c) When the employer documents that the employer has used
4 reasonable efforts to obtain staffing. An employer has not used
5 reasonable efforts if overtime work is used to fill vacancies
6 resulting from chronic staff shortages; or

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

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

14 NEW SECTION. Sec. 4. This act takes effect January 1, 2020."

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15 On page 1, line 2 of the title, after "employees;" strike the
16 remainder of the title and insert "amending RCW 49.28.130 and
17 49.28.140; adding a new section to chapter 49.12 RCW; and providing
18 an effective date."

EFFECT: Clarifies terminology. Modifies the meal and rest break exception to provide that the clinical circumstance justifying a interrupted meal or rest period: (1) Is determined by the employee, employer, or the employer's designee; and (2) is based on circumstances that may lead to a significant adverse effect on the patient's condition without the knowledge, skill or ability of the employee on break or due to an unforeseen or unavoidable event relating to patient care delivery requiring immediate action that could not be planned for by an employer.

Clarifies that if a rest break is interrupted by an employer or employer's designee the employee is given an additional ten minute break during the period the employee is required to receive a break, and if this condition is met the break is considered taken for the purposes of the minimum wage act.

Clarifies the record keeping provision and eliminates the reference to the L&I.

Delays the effective date of the meal and rest break provisions and the new overtime provisions for hospitals certified as a critical access hospital and hospitals with fewer than twenty-five acute care beds in operation, until July 1, 2020.

Delays the effective date of overtime provision for surgical technologists, diagnostic radiologic technologists, cardiovascular

invasive specialists, respiratory care practitioners, and certified nursing assistants until July 1, 2020.

Modifies the provisions regarding the use of prescheduled on-call time to prohibit its mandatory use: In lieu of scheduling employees to work regularly scheduled shifts when a staffing plan indicates the need for a scheduled shift; and when used to address regular changes in patient census or acuity or expected increases in the number of employees not reporting for predetermined scheduled shifts.

Deletes the provision that prohibited an employer from scheduling nonemergency procedures that would require overtime.

Provides that an employee accepting overtime, who works more than twelve consecutive hours shall be provided the option to have at least eight consecutive hours of uninterrupted time off from work following the time worked.

Deletes the section that allowed an employer to seek a variance of the new provisions from the director of L&I.

Provides the act takes effect on January 1, 2020.

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