

SENATE BILL REPORT

SB 5190

As Reported by Senate Committee On:
Labor & Commerce, January 28, 2019
Ways & Means, February 27, 2019

Title: An act relating to meal and rest breaks and mandatory overtime for certain health care employees.

Brief Description: Concerning meal and rest breaks and mandatory overtime for certain health care employees.

Sponsors: Senators Keiser, Conway, Hasegawa, Kuderer, Hunt, Saldaña, Darneille and Nguyen.

Brief History:

Committee Activity: Labor & Commerce: 1/21/19, 1/28/19 [DP-WM, DNP].
Ways & Means: 2/13/19, 2/27/19 [DPS, DNP, w/oRec].

Brief Summary of First Substitute 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.

SENATE COMMITTEE ON LABOR & COMMERCE

Majority Report: Do pass and be referred to Committee on Ways & Means.
Signed by Senators Keiser, Chair; Conway, Vice Chair; Saldaña and Wellman.

Minority Report: Do not pass.
Signed by Senators King, Ranking Member; Braun.

Staff: Richard Rodger (786-7461)

SENATE COMMITTEE ON WAYS & MEANS

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.

Majority Report: That Substitute Senate Bill No. 5190 be substituted therefor, and the substitute bill do pass.

Signed by Senators Rolfes, Chair; Frockt, Vice Chair, Operating, Capital Lead; Billig, Carlyle, Conway, Darneille, Hasegawa, Hunt, Keiser, Liias, Palumbo, Pedersen and Van De Wege.

Minority Report: Do not pass.

Signed by Senators Braun, Ranking Member; Brown, Assistant Ranking Member, Operating; Honeyford, Assistant Ranking Member, Capital; Becker, Schoesler, Wagoner, Warnick and Wilson, L..

Minority Report: That it be referred without recommendation.

Signed by Senators Mullet, Capital Budget Cabinet; Bailey and Rivers.

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.

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 (First Substitute): 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 and to allow for clinical circumstances that raise the acuity of the unit such that the employee is needed back from break to avoid patient harm.

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.

Sexual assault nurse examiners who work on a prescheduled on-call basis are exempt from the overtime restrictions.

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.

An employer may apply to the Department of Labor and Industries for a variance from the meal and rest break and overtime provisions.

EFFECT OF CHANGES MADE BY WAYS & MEANS COMMITTEE (First Substitute):

- Provides an additional exception to the uninterrupted meal and rest break requirement, to allow for clinical circumstances that raise the acuity of the unit such that the employee is needed back from break to avoid patient harm.
- Provides that the prohibition on mandatory overtime does not apply to sexual assault nurse examiners who work on a prescheduled on-call basis.
- Allows an employer to apply to the Department of Labor and Industries for a variance from the meal and rest break and overtime provisions.

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 on Original Bill (Labor & Commerce): PRO: I am never fully relieved of my duties while I am on break. When I do take a break it is up to me to find a nurse to take on my patients. We also have monitors in the break room and I am expected to watch my patients while on my break. I am also expected to carry a phone and take calls from doctors or pharmacy while I am on break. This bill still allows the flexibility so that the nurses can use their judgment and the best time to take a break. The bill does not apply when there is an emergency circumstance or when the specific skill or expertise of the employee is needed to avoid patient harm. As a nurse I would never abandon my patient if something critical was going on.

Overtime should never be mandatory because of the intense work that we do. Hospitals are not giving us the tools that we need to be successful. Lack of adequate staffing is not safe and places patients at risk in their most fragile time.

When dealing with the most critically ill people breaks are essential. Hospitals need to guarantee that nurses get their breaks and facilities should never use prescheduled on call to fill chronic or foreseeable staffing shortages. Breaks and overtime protection is about the broad base problem of chronic fatigue. It is inappropriate that hospital workers are not protected by basic meal and rest breaks. California has all of these standards in place and all of their hospitals are still functioning.

CON: Scheduling staff using prescheduled on call or overtime is never ideal. It is much more difficult and expensive to staff a hospital; however, prescheduled on call is an important tool to ensure that we can continue to provide services 24 hours per day 365 days a year. Mandatory overtime and scheduled on call would be very restrictive to the operations of an operating room and this bill has dangerous implications for some of our patients. Bumping patient's care back could have unintended consequences that snowball into larger health problems for them.

This bill puts rigidity into law and creates a one size fits all solution. There is nothing less predictable than patient care in hospitals no matter what department you are in and one size fits all does not work for every hospital, let alone every department within a hospital. It will require us to hire these additional staff, that very conservatively would cost our small critical access hospital probably \$400,000 a year.

We believe in addressing concerns at the local level and the best solution is to do that through our staffing committees, working with our managers and our staff to ensure that these issues are addressed.

We have two main concerns; first of all that a physician would be unable to talk with a nurse who has critical knowledge about a patient when this nurse's on break, and second are the operational changes with the limits on-call and overtime that will result in patient care delays which can easily lead to a deterioration in the patient's condition. We are opposed to the Legislature putting in strict restrictions in law on how we staff our nurses. Allow us to work with our staff through our staffing committees.

Persons Testifying (Labor & Commerce): PRO: Martha Galvez, Washington State Nurses Association; Nicolas Escobar, SEIU 1199NW; Michael Trumbly, SEIU 1199NW; Suzanne Woodward, UFCW 21; Brett Percival, UFCW 21.

CON: Jennifer Duran, St. Elizabeth's Hospital; Jim Wade, Legacy Salmon Creek; Jeannie Eylar, Pullman Regional Hospital; Jesse Holcomb, Pullman Regional Hospital; Patrick Ahearne, St. Clare's Hospital; Lisa Thatcher, Washington State Hospital Association; Roman Daniels-Brown, WSMA.

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

Staff Summary of Public Testimony on Original Bill (Ways & Means): *The committee recommended a different version of the bill than what was heard.* PRO: Working in a hospital is hard and it is not unreasonable to ask for an uninterrupted 15 minute break. This cost does not apply to the general fund. The fiscal note is overly inflated because most of what is happening already complies with this bill. UW Medicine and Harborview are not the institutions causing the problem. The fiscal note has increased significantly over time. The cost is related to the cost to UW and does not include the cost of fatigue. The cost of fatigue is high and we are all paying it today. Collective bargaining is not the solution because not all hospital have collective bargaining units. Breaks keep patients in our communities safe.

CON: The vast majority of the nurses and technician positions are receiving uninterrupted 15 minute increments. UW Medical and Harborview would implement a relief program that would require additional staffing. Some units at Harborview have implemented this and there was a cost and that additional cost is not captured in the new cost.

Overlake and St. Joseph Medical Center have been implementing similar staffing models for certain positions by working with the nurses and it has resulted in additional cost. The break nurse positions are not desirable and have been difficult to fill. Nurses find it gratifying to work with the patients and break nurses don't get to do that. Under this bill the number of break nurses would double. This bill does not offer flexibility in creating a nurse break

program. Hospitals that have collectively bargained for break nurse programs have not implemented them across all units and this bill does not allow that flexibility.

Persons Testifying (Ways & Means): PRO: Senator Karen Keiser, Prime Sponsor; Lindsey Grad, Service Employees International Union Healthcare 1199NW; Ed Zercher, Washington State Nurses Association.

CON: Ian Goodhew, University of Washington; Kate Woodard, Overlake Medical Center; Kim Deynaka, St. Joseph Medical Center; Lisa Thatcher, Washington State Hospital Association.

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