

HOUSE BILL REPORT

HB 1155

As Reported by House Committee On: Labor & Workplace Standards

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: Representatives Riccelli, Appleton, Sells, Chapman, Fitzgibbon, Cody, Pellicciotti, Frame, Sullivan, Wylie, Jinkins, Orwall, Valdez, Ortiz-Self, Stonier, Thai, Lovick, Reeves, Doglio, Pollet, Bergquist, Santos, Macri, Goodman, Robinson and Stanford.

Brief History:

Committee Activity:

Labor & Workplace Standards: 1/21/19, 1/31/19 [DP].

Brief Summary of Bill

- Provides that certain hospital employees must be allowed to take uninterrupted and non-intermittent meal and rest periods, except under limited circumstances.
- Amends the prohibition on mandatory overtime in health care facilities to, among other things, include additional employees and prohibit the employer from using prescheduled on-call time to fill foreseeable staff shortages.

HOUSE COMMITTEE ON LABOR & WORKPLACE STANDARDS

Majority Report: Do pass. Signed by 5 members: Representatives Sells, Chair; Chapman, Vice Chair; Mosbrucker, Ranking Minority Member; Gregerson and Ormsby.

Minority Report: Do not pass. Signed by 1 member: Representative Chandler, Assistant Ranking Minority Member.

Minority Report: Without recommendation. Signed by 1 member: Representative Hoff.

Staff: Trudes Tango (786-7384).

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.

Background:

Meal and Rest Periods.

The Department of Labor and Industries (Department) establishes 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 duties during the meal period. Meal periods must be paid if the employee must remain on the premises and act in the interest of the employer. An employee who is required to remain on the premises and act in the interest of the employer may have their meal period interrupted to perform tasks, but once the task is complete, the meal period continues until the employee receives 30 minutes total.

Regarding rest periods, employees must receive a paid rest period of at least 10 minutes for each four-hour period worked. The rest period must be allowed no later than the end of the third hour worked.

Employees need not be given an uninterrupted 10-minute break if the nature of the work allows for intermittent rest periods equal 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 and attending to personal business. In certain circumstances, employers may require employees to remain on-call during their paid rest breaks. Employees may remain on-call during rest periods, but if they are called to duty, the break becomes an intermittent rest period.

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 involved in direct patient care activities or clinical services and who 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 prohibitions 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:

(In support) Health care workers need to be mentally and physically recuperated in order to provide safe patient care. Nurses are never really relieved of their duties when on break.

They are expected to continue monitoring their patients. It is unsafe when nurses are required to work 14-hour shifts. Facilities need a staffing plan to cover patients while nurses are on break. Using the break-buddy system results in one nurse being responsible for double the number of patients. Emergency rooms should not use prescheduled on-call time to fill scheduling gaps. Nurses who have already worked full shifts are asked to return to work and that puts patients at risk. A nurse could be disciplined if the nurse does not come in when he or she is on mandatory call. The bill allows flexibility so nurses can use their best judgment on when to take their break. The bill does not require breaks to follow a hard schedule.

(Opposed) On-call is an important tool to ensure 24-hour service. Events do not happen on a fixed schedule at hospitals. The bill allows the use of on-call when the hospital knows or anticipates the need for it, but in the hospital context, things are unpredictable and unanticipated. The bill takes a "one size fits all" approach to the issue. The costs of hiring additional nurses to relieve breaks every time would be high and there is already a nursing shortage in the state, especially in rural areas. Nursing staffing committees can help with solutions. These issues should be addressed at the organizational level. Any rigidity regarding staffing would degrade the ability to render care to patients. The bill could delay procedures, be a disservice to patients, lead to uncertainty regarding the delivery of care, and have unintended consequences.

Persons Testifying: (In support) Representative Riccelli, prime sponsor; Michael Trumbly, Service Employees International Union, Healthcare 1199 Northwest; Kristie Dimak and Gail Stewart, Service Employees International Union; Suzanne Woodard, United Food and Commercial Workers 21; Martha Galvez, Kadlec Regional Medical Center and Washington State Nurses Association; Jennifer Muhm, Washington State Nurses Association; and Bret Percival, MultiCare Auburn Medical Center and United Food and Commercial Workers 21.

(Opposed) Jennifer Duran, St. Elizabeth's Hospital; Jeannie Eylar and Jesse Holcomb, Pullman Regional Hospital; Patrick Ahearne, St Clare's Hospital; Roman Daniels-Brown, Washington State Medical Association; and Lisa Thatcher, Washington State Hospital Association.

Persons Signed In To Testify But Not Testifying: None.