
SUBSTITUTE SENATE BILL 5190

State of Washington

66th Legislature

2019 Regular Session

By Senate Ways & Means (originally sponsored by Senators Keiser, Conway, Hasegawa, Kuderer, Hunt, Saldaña, Darneille, and Nguyen)

READ FIRST TIME 03/01/19.

1 AN ACT Relating to meal and rest breaks and mandatory overtime
2 for certain health care employees; amending RCW 49.28.130 and
3 49.28.140; and adding new sections to chapter 49.12 RCW.

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

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

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

9 (a) Rest periods may be taken at any point during each work
10 period during which the employee is required to receive a rest
11 period; and

12 (b) Meal and rest periods must be uninterrupted, and an employer
13 may not require an employee to take intermittent meal or rest
14 periods. This subsection (1)(b) does not apply when there is:

15 (i) An unforeseeable emergent circumstance, as defined in RCW
16 49.28.130; or

17 (ii) A clinical circumstance that may lead to patient harm
18 without the specific skill or expertise of the employee taking a meal
19 or rest period, or that raises the acuity of the unit to which the
20 employee is assigned such that the employee is needed back from break
21 to avoid patient harm.

1 (2) The employer shall record when an employee takes or misses a
2 meal or rest period and maintain these records as required by the
3 department.

4 (3) For purposes of this section, the following terms have the
5 following meanings:

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

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

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

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

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

18 (b) "Employer" means hospitals licensed under chapter 70.41 RCW.

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; 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 certified nursing assistant as defined in RCW 18.88A.020.

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

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

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

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

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

15 (i) Hospices licensed under chapter 70.127 RCW;

16 (ii) Hospitals licensed under chapter 70.41 RCW;

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

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

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

23 (b) If a nursing home regulated under chapter 18.51 RCW or a home
24 health agency regulated under chapter 70.127 RCW is operating under
25 the license of a health care facility, the nursing home or home
26 health agency is considered part of the health care facility for the
27 purposes of this subsection.

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

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

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

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

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

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

6 (d) Seeks personnel from a contracted temporary agency when such
7 staffing is permitted by law or an applicable collective bargaining
8 agreement, and when the employer regularly uses a contracted
9 temporary agency.

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

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

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

21 (2) The acceptance by any employee of overtime is strictly
22 voluntary, and the refusal of an employee to accept such overtime
23 work is not grounds for discrimination, dismissal, discharge, or any
24 other penalty, threat of reports for discipline, or employment
25 decision adverse to the employee.

26 (3) The employer may not use prescheduled on-call time to fill
27 chronic or foreseeable staff shortages.

28 (4) This section does not apply to overtime work that occurs:

29 (a) Because of any unforeseeable emergent circumstance;

30 (b) Because of prescheduled on-call time necessary for immediate
31 and unanticipated patient care emergencies;

32 (c) When the employer documents that the employer has used
33 reasonable efforts to obtain staffing. An employer has not used
34 reasonable efforts if overtime work is used to fill vacancies
35 resulting from chronic staff shortages; or

36 (d) When an employee is required to work overtime to complete a
37 patient care procedure already in progress where the absence of the
38 employee could have an adverse effect on the patient. The employer
39 may not schedule nonemergency procedures that would require overtime.

1 (5) This section does not apply to sexual assault nurse examiners
2 who work on a prescheduled on-call basis.

3 NEW SECTION. **Sec. 4.** A new section is added to chapter 49.12
4 RCW to read as follows:

5 Pursuant to RCW 49.12.105, an employer may apply to the director
6 for a variance of the elements of chapter . . ., Laws of 2019 (this
7 act).

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