

HOUSE BILL REPORT

HB 2824

As Reported by House Committee On:
Commerce & Labor

Title: An act relating to hours of labor for nurses.

Brief Description: Regarding hours of labor for nurses.

Sponsors: Representatives Green, Appleton, Sells, Hunt, Nelson, Conway, Morrell, Darneille, McIntire, Sullivan, Wood, Simpson, Hasegawa and O'Brien.

Brief History:

Committee Activity:

Commerce & Labor: 2/1/08, 2/4/08 [DPS].

Brief Summary of Substitute Bill

- Adds various public facilities, including state hospitals, veterans' homes, residential habitation centers, and correctional facilities, to the health care facilities prohibited from requiring overtime from their nursing staff.
- Limits exceptions to the prohibition on mandatory overtime for circumstances relating to prescheduled on-call time and patient care in progress.
- Requires health care facilities to schedule meal and rest periods for certain registered and licensed practical nurses.

HOUSE COMMITTEE ON COMMERCE & LABOR

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 6 members: Representatives Conway, Chair; Wood, Vice Chair; Crouse, Green, Moeller and Williams.

Minority Report: Do not pass. Signed by 2 members: Representatives Condotta, Ranking Minority Member; Chandler, Assistant Ranking Minority Member.

Staff: Alison Hellberg (786-7152).

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:

Both federal and Washington minimum wage laws establish requirements related to overtime work. These laws require covered employees to receive overtime pay for hours worked over 40 hours per week. Another state law requires overtime compensation for certain full-time employees, including nursing staff, of state institutions under the control of the Department of Social and Health Services (DSHS) or the Department of Corrections (DOC) after eight hours of work in a work day or 40 hours of work in a work week. With some exceptions, these wage laws do not prohibit an employer from requiring employees to work overtime.

One exception, enacted in 2002, prohibits covered health care facilities from requiring overtime, except in limited circumstances, for registered nurses and licensed practical nurses who are involved in direct patient care and paid an hourly wage. For this prohibition on mandatory overtime, overtime means work in excess of an agreed upon, regularly scheduled shift of not more than 12 hours in a 24-hour period or 80 hours in a 14-day period. A health care facility means a facility that is licensed under specified laws as a hospital, a hospice, a rural health care facility, or a psychiatric hospital.

A nursing home or a home health agency is considered part of a health care facility if the nursing home or home health agency is operating under the license of the health care facility.

The state psychiatric hospitals and other institutions operated by the DSHS or the DOC are not licensed under the statutes specified in the overtime prohibition law. Home health agencies are not authorized to operate under a license of a health care facility.

The prohibition on mandatory overtime does not apply to overtime work that occurs in specific circumstances. One exception includes overtime work that occurs because the work is required to complete a patient care procedure already in progress.

Under the Washington Industrial Welfare Act (IWA), it is unlawful for an employer to employ workers under conditions of labor that are detrimental to their health. The Department of Labor and Industries is authorized to conduct investigations into employment conditions and to adopt rules establishing employment standards.

The rules governing rest and meal periods require a paid rest period of at least 10 minutes for each four hours of working time. Employees are also allowed a meal period of at least 30 minutes which begins between two and five hours from the beginning of a shift. If an employee works at least three hours longer than a normal work day, the employee is allowed at least one 30-minute meal period during the overtime period. An employee may not work longer than five consecutive hours without a meal period.

Where the nature of the work allows, employees may take intermittent rest periods equivalent to 10 minutes for each four hours worked. Scheduled rest periods are not required.

Summary of Substitute Bill:

Coverage under the Prohibition on Mandatory Overtime Law

The following entities are added to the list of health care facilities covered under the prohibition on mandatory overtime law for certain registered and licensed practical nurses:

- state hospitals that are operated and maintained by the state for the care of the mentally ill (these facilities are Western State Hospital, Eastern State Hospital, and the Child Study and Treatment Center);
- state veterans' homes (these homes are the Washington Soldiers' Home, the Washington Veterans' Home, and the Eastern Washington Veterans' Home);
- residential habilitation centers established to provide services to persons with developmental disabilities (these centers are Lakeland Village, Rainier School, Yakima Valley School, Fircrest School, Frances Haddon Morgan Children's Center, Interlake School, and facilities at Harrison Memorial Hospital);
- state or local correctional institutions with respect to facilities owned and operated by the state or by local governments that provide health care services to adult inmates; and
- facilities that provide health care in an institution for juveniles committed to the custody of the DSHS or in a county detention facility where juveniles are confined.

Exceptions from the Prohibition on Mandatory Overtime Law

Limitations are added to two of the exceptions to the prohibition on mandatory overtime law. First, prescheduled on-call time is an exception unless it is used to fill chronic staff shortages or is used due to a lack of good faith by the health care facility to schedule patient procedures so that overtime would not be required. Second, completing a patient care procedure already in progress is an exception only if the health care facility makes a good-faith effort to schedule such procedures without requiring overtime.

The requirement is deleted for home health agencies to be covered if operating under the license of a health care facility.

For certain employees of the DSHS or the DOC, who are entitled to overtime compensation, the applicable overtime requirements are subject to the prohibition on mandatory overtime law if the employees are covered employees of a health care facility under that law.

Meal and Rest Periods

Health care facilities must allow certain registered and licensed practical nurses to take scheduled meal and rest periods as specified in rules adopted by the Department of Labor and Industries. These registered and licensed practical nurses are not engaged in the type of work that allows for intermittent rest periods in place of scheduled rest periods.

Substitute Bill Compared to Original Bill:

The pre-scheduled on-call time exception to the prohibition on mandatory overtime is limited so that it does not apply when used due to a lack of good faith by the health care facility to schedule patient procedures so that overtime would not be required.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) This bill is really about recruitment and retention of nurses. One of the biggest barriers in keeping nurses in acute care facilities is the working conditions. There is also much evidence that when nurses work long hours it impairs their ability to make decisions. The private sector has learned to live with this change. Some of the public agencies have dealt with this issue in collective bargaining agreements, but not all of them.

The 2002 law prohibiting mandatory overtime in certain health care facilities really means that nurses do not have to continue working when they do not think they can. It is really about patient safety. Patients depend on nurses to make split-second decisions.

Hospitals have been taking advantage of the on-call exception to mandatory overtime. Many hospitals have been using this to replace mandatory overtime. Nurses are put on-call when there are no emergencies and doctors schedule non-emergency work to keep nurses longer.

There is a rule requiring rest periods, but they do not have to be scheduled and can be intermittent. What often happens is that nurses go to the bathroom or stop to talk to a colleague and then the hospitals count that as a rest period after the fact. Nurses really do need a scheduled rest period. Nurses need a chance to collect their thoughts in order to function at the level they need to. Studies have shown that when a person works more than 12 hours without a break, his or her mental acuity is equal to that of a legally drunk person. The likelihood of error increases with longer shifts. Uninterrupted breaks allow nurses to refresh and re-group.

The bill maintains an exception for emergent circumstances. If an emergency happens, medical personnel will be available. During the recent floods, nurses stayed at the hospital.

(Neutral) There is no specific language related to health care facilities in the rules promulgated by the Department of Labor and Industries. Workers are basically entitled to two rest periods and a meal period in a shift. Intermittent breaks are frequently used, especially with small businesses. The agency does not have penalty authority when businesses do not provide meal and rest periods.

(Opposed) The provisions dealing with meal and rest periods are particularly troubling. This rule has been in place since 1976 and is also a subject of collective bargaining requirements. If the bill moves forward, these sections should be removed.

A bill was recently heard in the Health Care Committee which creates staffing committees in hospitals. The issues related to on-call provisions would be a great place to begin discussion about these staffing issues.

The nature of nursing work is very unpredictable and nurses work in a very autonomous manner. Charge nurses are not management, but decide how the workload is managed. This bill would require charge nurses to take more of a management role and mandate how nurses spend their time, taking away their autonomy. It would subordinate the needs of the patient.

Unions are in place in the hospitals, so there are processes to deal with concerns with breaks. Hospitals are complex and demanding places so they need flexibility. Planning breaks is good management; not having it in statute leaves flexibility. The hands of nurses should not be tied.

Persons Testifying: (In support) Representative Green, prime sponsor; Anne Tan Piazza and Kim Armstrong, Washington State Nurses Association; Barbara Cryderman, Service Employees International Union Health Care; and Sharon Ness, United Food and Commercial Workers.

(Neutral) Rich Ervin, Department of Labor and Industries.

(Opposed) Lisa Thatcher, Washington State Hospital Association; and Tom Hightower, Grays Harbor Community Hospital.

Persons Signed In To Testify But Not Testifying: None.