CERTIFICATION OF ENROLLMENT

**SUBSTITUTE HOUSE BILL 1155**

66th Legislature

2019 Regular Session

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| Passed by the House April 24, 2019  Yeas 70 Nays 24  **Speaker of the House of Representatives**  Passed by the Senate April 24, 2019  Yeas 32 Nays 16  **President of the Senate** | CERTIFICATE  I, Bernard Dean, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SUBSTITUTE HOUSE BILL 1155** as passed by the House of Representatives and the Senate on the dates hereon set forth.  Chief Clerk |
| Approved |  |
| **Governor of the State of Washington** | **Secretary of State**  **State of Washington** |

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**SUBSTITUTE HOUSE BILL 1155**

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AS AMENDED BY THE CONFERENCE COMMITTEE

Passed Legislature - 2019 Regular Session

**State of Washington 66th Legislature 2019 Regular Session**

**By** House Appropriations (originally sponsored by 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)

AN ACT Relating to meal and rest breaks and mandatory overtime for certain health care employees; amending RCW 49.28.130 and 49.28.140; adding a new section to chapter 49.12 RCW; and providing an effective date.

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

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

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

(a) Rest periods must be scheduled at any point during each work period during which the employee is required to receive a rest period;

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

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

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

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

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

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

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

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

(a) "Employee" means a person who:

(i) Is employed by a health care facility;

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

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

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

(b) "Employer" means hospitals licensed under chapter 70.41 RCW, except that the following hospitals are excluded until July 1, 2021:

(i) Hospitals certified as critical access hospitals under 42 U.S.C. Sec. 1395i-4;

(ii) Hospitals with fewer than twenty-five acute care beds in operation; and

(iii) Hospitals certified by the centers for medicare and medicaid services as sole community hospitals as of January 1, 2013, that: Have had less than one hundred fifty acute care licensed beds in fiscal year 2011; have a level III adult trauma service designation from the department of health as of January 1, 2014; and are owned and operated by the state or a political subdivision.

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

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

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

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

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

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

(iv) Is either:

(A) A licensed practical nurse or registered nurse licensed under chapter 18.79 RCW; or

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

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

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

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

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

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

(i) Hospices licensed under chapter 70.127 RCW;

(ii) Hospitals licensed under chapter 70.41 RCW, except that until July 1, 2021, the provisions of section 3, chapter . . ., Laws of 2019 (section 3 of this act) do not apply to:

(A) Hospitals certified as critical access hospitals under 42 U.S.C. Sec. 1395i-4;

(B) Hospitals with fewer than twenty-five acute care beds in operation; and

(C) Hospitals certified by the centers for medicare and medicaid services as sole community hospitals as of January 1, 2013, that: Have had less than one hundred fifty acute care licensed beds in fiscal year 2011; have a level III adult trauma service designation from the department of health as of January 1, 2014; and are owned and operated by the state or a political subdivision;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Because of any unforeseeable emergent circumstance;

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

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

(ii) Mandatory prescheduled on-call time may not be used to address regular changes in patient census or acuity or expected increases in the number of employees not reporting for predetermined scheduled shifts;

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

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

(4) 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.

NEW SECTION. **Sec.**  This act takes effect January 1, 2020.

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