

HOUSE BILL REPORT

SHB 1155

As Amended by the Senate

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: House Committee on 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).

Brief History:

Committee Activity:

Labor & Workplace Standards: 1/21/19, 1/31/19 [DP];
Appropriations: 2/13/19, 2/25/19 [DPS].

Floor Activity:

Passed House: 3/6/19, 63-34.
Senate Amended.
Passed Senate: 4/16/19, 30-18.

Brief Summary of Substitute 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.

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.

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).

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 21 members: Representatives Ormsby, Chair; Bergquist, 2nd Vice Chair; Robinson, 1st Vice Chair; Chandler, Cody, Dolan, Fitzgibbon, Hansen, Hudgins, Jinkins, Macri, Mosbrucker, Pettigrew, Pollet, Ryu, Senn, Stanford, Sullivan, Tarleton, Tharinger and Volz.

Minority Report: Do not pass. Signed by 12 members: Representatives Stokesbary, Ranking Minority Member; MacEwen, Assistant Ranking Minority Member; Rude, Assistant Ranking Minority Member; Caldier, Dye, Hoff, Kraft, Schmick, Springer, Steele, Sutherland and Ybarra.

Staff: Catrina Lucero (786-7192).

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.

Variances.

An employer may apply to the Department for a variance from any rule establishing hours or conditions of labor. The Director of the Department must issue a variance if the Director determines that the employer has shown good cause for the lack of compliance.

Summary of Substitute 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: (a) an unforeseeable emergent circumstance; or (b) a clinical circumstance that may lead to patient harm without the employee's specific skill or expertise or that raises the acuity of the unit to which the employee is assigned 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 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.

The overtime restrictions do not apply to sexual assault nurse examiners who work on a prescheduled on-call basis.

Variances.

An employer may apply for a variance from the meal and rest break provisions and the overtime restrictions.

EFFECT OF SENATE AMENDMENT(S):

The Senate striking amendment 668:

- provides that the rest periods must be "scheduled" (rather than "may be taken") at any point during the work period in which a rest period is required, and removes the provision prohibiting an employer from requiring employees to take intermittent meal or rest periods;
- provides that if any rest break is interrupted before 10 complete minutes by an employer or employer's designee, the employee must be provided an additional 10 minute uninterrupted break at the earliest reasonable time during the period the employee is required to receive a break;
- amends the meal and rest break exception to provide that the clinical circumstance justifying an interrupted meal or rest period: (1) is determined by the employee, employer, or the employer's designee; and (2) is based on circumstances that may lead to a significant adverse effect on the patient's condition without the knowledge, skill or ability of the employee on break or due to an unforeseen or unavoidable event relating to patient care delivery requiring immediate action that could not be planned for by an employer;
- clarifies the record keeping provision and eliminates the reference to the Department of Labor and Industries (L&I);
- exempts certified critical access hospitals and hospitals with fewer than 25 acute care beds from the meal and rest break provisions and from the overtime provision prohibiting the use of mandatory prescheduled on-call time, until July 1, 2020;
- exempts from the overtime provisions, health care employees other than licensed practical nurses and registered nurses, until July 1, 2020;

- provides that 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;
- provides that 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;
- requires that an employee accepting overtime who works more than 12 consecutive hours must be provided the option to have at least eight consecutive hours of uninterrupted time off;
- removes the provision that prohibited an employer from scheduling nonemergency procedures that would require overtime;
- removes the exemption for sexual assault nurse examiners who work on a prescheduled on-call basis;
- removes the provision that allowed an employer to seek a variance of the new provisions from the director of L&I; and
- provides the act takes effect on January 1, 2020.

The Senate amendment 724:

- exempts certified critical access hospitals and hospitals with fewer than 25 acute care beds from the meal and rest break provisions and from the provisions prohibiting the use of mandatory prescheduled on-call time;
- removes the new definitions of "employer" and "employee" for purpose of overtime (thereby retaining current law to, among other things, have the provisions apply only to nurses and remove reference to nurses covered by a collective bargaining agreement);
- references nurse staffing plans in the provisions prohibiting mandatory prescheduled on-call time.

The Senate amendment 725:

- amends the definition of "overtime" by removing the provision that limited overtime to 12 hours in a 24 hour period or 80 hours in a consecutive 14 day period; and
- provides that an employee may not work more than eight hours in a 24 hour period for a health care facility.

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 (Labor & Workplace Standards):

(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.

Staff Summary of Public Testimony (Appropriations):

(In support) In 2010 there was arbitration related to nurses getting their rest breaks. The University of Washington has largely complied with that ruling. In the last several years, there have been no grievances for nurses not getting their breaks, meaning that nurses are getting their rest breaks. The elements of this bill are already included in the contract with Harborview Medical Center. The provisions of the bill are already happening many places and thus should not generate a large fiscal impact. The estimates in the fiscal note are overstated. They have changed over the years, even when the bill is substantially the same. Every purchaser of healthcare is paying the cost of avoidable medical errors. Avoidable medical errors are the third leading cause of death. There are 400,000 of these deaths per year. The costs are over \$20 billion per year. Health care workers impacted by this bill are on the front lines of helping us avoid medical errors. Burnout is caused by fatigue and leads to additional hospital costs. Avoiding medical errors and paying people straight time would save hospitals money.

(Opposed) There is a lot of disagreement related to the fiscal note. The University of Washington works very hard to ensure that nurses get their breaks. However, the nature of their work often prevents these from being taken in an uninterrupted fashion. Oftentimes staff cover for each other. Employees are asked to report when and how they take their breaks. The majority of those are uninterrupted. This bill mandates a certain level of staffing to ensure that all breaks are uninterrupted, which equates to hiring additional full-time equivalent positions. Harborview Medical Center has implemented a break program in several units at a cost of \$3.2 million. Collective bargaining is the appropriate place to deal with this level of staffing. The fiscal impact of this bill is a direct result of requiring hospitals to hire additional staff to cover all breaks to ensure that they are uninterrupted. Overlake Medical Center implemented a break program at nine inpatient units, which cost over \$700,000 per year. At full implementation, Overlake Medical Center expects a total cost of \$5 million. This bill does not allow for flexibility or the level of shared decision making that is needed. Filling break nurse positions is difficult. Many nurses are not interested in these

positions. These roles require highly experienced nurses. In 2017 St. Joseph's Hospital agreed to hire additional staff to ensure that nurses received uninterrupted rest breaks at a cost of \$2.2 million per year in salaries. To date, not all the break nurse positions have been filled as these are difficult hires. Continually rehiring for these positions is expensive. Break nurses are not able to develop relationships with the patients like regular nurses. Break nurse staffing has been accomplished at the local level through collective bargaining. This is not done at all units, but on a selective basis where it is most appropriate. This bill does not allow for that flexibility.

Persons Testifying (Labor & Workplace Standards): (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 Testifying (Appropriations): (In support) Lindsey Grad, Service Employees International Union, Healthcare 1199; and Ed Zercher, Washington State Nurses Association.

(Opposed) Ian Goodhew, University of Washington; Kate Woodard, Overlake Medical Center; Kim Deynaka, St. Joseph Medical Center; and Lisa Thatcher, Washington State Hospital Association.

Persons Signed In To Testify But Not Testifying (Labor & Workplace Standards): None.

Persons Signed In To Testify But Not Testifying (Appropriations): None.