

SENATE BILL REPORT

SHB 1155

As Reported by Senate Committee On:
Labor & Commerce, March 19, 2019
Ways & Means, April 3, 2019

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: Passed House: 3/06/19, 63-34.

Committee Activity: Labor & Commerce: 3/14/19, 3/19/19 [DPA-WM, DNP].

Ways & Means: 3/26/19, 4/03/19 [DPA(LBRC), DNP].

Brief Summary of Amended Bill

- Provides that certain hospital employees must be allowed to take uninterrupted meal and rest periods that are not intermittent, except under limited circumstances.
- Amends the prohibition on mandatory overtime in health care facilities by including additional employees, prohibiting the employer from using prescheduled on-call time to fill foreseeable staff shortages, and making other changes.
- Prohibits covered employees from voluntarily working more than sixty hours in a seven-day period for a health care facility.
- Requires an additional break if a rest break is interrupted.

SENATE COMMITTEE ON LABOR & COMMERCE

Majority Report: Do pass as amended and be referred to Committee on Ways & Means.
Signed by Senators Keiser, Chair; Conway, Vice Chair; Saldaña and Wellman.

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 Senators King, Ranking Member; Walsh.

Staff: Richard Rodger (786-7461)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: Do pass as amended by Committee on Labor & Commerce.

Signed by Senators Rolfes, Chair; Frockt, Vice Chair, Operating, Capital Lead; Billig, Carlyle, Conway, Darneille, Hasegawa, Hunt, Keiser, Liias, Palumbo, Pedersen and Van De Wege.

Minority Report: Do not pass.

Signed by Senators Mullet, Capital Budget Cabinet; Braun, Ranking Member; Brown, Assistant Ranking Member, Operating; Honeyford, Assistant Ranking Member, Capital; Bailey, Becker, Rivers, Schoesler, Wagoner and Warnick.

Staff: Amanda Cecil (786-7460)

Background: Meal and Rest Periods. The Department of Labor and Industries (L&I) establishes by rule, 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 their duties during the meal period. Meal periods are on the employer's time if the employee must remain on the premises and act in the interest of the employer.

Employees must receive a rest period of at least ten minutes for each four-hour period worked. Rest periods are on the employer's time. The rest period must be allowed no later than the end of the third hour worked.

When the nature of the work allows, employees may take intermittent rest periods that add up to ten minutes. L&I'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, attending to personal business, and eating a snack. 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, who are involved in direct patient care activities or clinical services and 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.

Variations. An employer may apply to L&I for a variance from any rule establishing hours or conditions of labor. The director of L&I must issue a variance if the director determines the employer has shown good cause for the lack of compliance.

Summary of Amended 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.

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 and to allow for clinical circumstances that raise the acuity of the unit such that the employee is needed back from break to avoid patient harm.

An additional break is required if a rest break is interrupted. Rest breaks do not include the brief use of a restroom or the brief consumption of food or a beverage. The hospital must record when an employee takes or misses a meal or rest period and maintain the records as required by L&I.

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 restrictions are expanded to apply to the same groups of employees covered under the meal and rest period provisions. For facilities owned and operated by prisons and jails, the restrictions apply only to licensed practical nurses and registered nurses.

Employees may not voluntarily work more than sixty hours in a seven-day period for a health care facility. 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 mandatory 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.

Sexual assault nurse examiners and organ transplant teams who work on a prescheduled on-call basis are exempt from the overtime restrictions.

Variances. An employer may apply to L&I for a variance from the meal and rest break and overtime provisions.

EFFECT OF LABOR & COMMERCE COMMITTEE AMENDMENT(S):

- Rest breaks do not include the brief use of a restroom or the brief consumption of food or a beverage.
- An additional break is required if a rest break is interrupted.
- An employer may not schedule a nonemergency procedure that would require mandatory overtime.
- Covered employees are prohibited from voluntarily working more than sixty hours in a seven-day period for a health care facility.
- Organ transplant teams are exempt from the overtime requirements.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Substitute House Bill (Labor & Commerce):

The committee recommended a different version of the bill than what was heard. PRO: Most front line nurses work 12-hour shifts and are stretched too thin. This will ensure that hospitals are staffed to adequate levels and that nurses get breaks. The bill addresses chronic and dangerous fatigue by these workers. It is a patient safety issue, as it is difficult to provide adequate care when the staff are tired, hungry, and overworked. Seventeen other states prohibit mandatory overtime. Collective bargaining gives the nurses the right to set the types of schedules, however the employer decides which schedule they will use. Medical errors skyrocket with fatigued health care workers. Rested nurses prevent 80 percent of medical errors. Arbitrators have rules that it is not safe to miss breaks. We have filed dozens of lawsuits, all the way to the Supreme Court, winning every one of them. With scheduled breaks we have flexibility, better outcomes, higher satisfaction, and less turnover.

CON: Hospitals have the responsibility to provide adequate meal and rest breaks. At our hospital only 4.16 percent of breaks were missed. At Holy Family Hospital 97 percent of the nurses got their breaks. The problems are localized and are best addressed through the nurse staffing committees. Rigid schedules would cost our hospital \$12 million dollars. As a professional, I should be able to decide when and how to take my breaks. We can not predict

when a surgery will end and have to have staff available. Some surgeries can take a range of 2 to 12 hours to perform. Small community hospitals must use prescheduled on-call or the surgeries would have to be rescheduled days or weeks later if bumped by emergent cases. The bill makes it so physicians are unable to talk with nurses on break if the questions are not emergent. This is a very serious bill with unintended consequences. The bill may prevent our state from getting organ transplants if there are questions about our staff ability. The bill prohibits overtime even if it is voluntary. Missed breaks are in the range of 3.6 to 10 percent, it is not a systemic problem.

Persons Testifying (Labor & Commerce): PRO: Representative Marcus Riccelli, Prime Sponsor; Mark Riker, Washington State Building and Construction Trades Council; Lindsey Grad, SEIU Healthcare 1199NW; Grace Yang, RN, Harborview; Kat Wood, UFCW; Lindsey Kirsch, RN, Children's Hospital; Ingrid Anderson, RN, Overlake; Cindy Franck, RN, UFCW; Jennifer Muhm, Washington State Nurses Association.

CON: Susan Stacey, Sacred Heart Medical Center; Jackie Hunter, RN, Evergreen Health Monroe; Tracey Jones, Virginia Mason; Roman Daniels-Brown, Washington State Medical Association; Midori Larrabee, Evergreen Health Monroe; Lisa Thatcher, Washington State Hospital Association.

Persons Signed In To Testify But Not Testifying (Labor & Commerce): No one.

Staff Summary of Public Testimony on the Bill as Amended by Labor & Commerce (Ways & Means): PRO: The fiscal note on this bill has changed over the years from the first year where there was no fiscal note to this version showing \$28 million. This fiscal note is a case of bad math and bad priorities. UWMC was part of an arbitration that resulted in the current system. This bill allows flexibility in how the law is implemented. Intermittent breaks are an unacceptable standard for nurses.

I am here, very tired. I do not get regular lunches and rest breaks. When I get tired it is dangerous and the work takes longer.

CON: Nursing is a sacred profession. Nurses need breaks so they can provide excellent patient care. Our nurses get breaks now 90 to 95 percent of the time. This would require additional staffing even though we do not have a problem. This bill does harm by driving up costs with no evidence that it improves patient outcomes. Getting a break is the current law. This policy applies broadly to hospitals that do not have a problem. It is unclear what constitutes emergent versus non-emergent needs. This could result in important procedures being bumped that really are needed.

The fiscal note this year is accurate. The reason it has costs is to ensure that breaks are never missed. This is based on the actual cost that was incurred by implementing this kind of program at eight Harborview units.

Persons Testifying (Ways & Means): PRO: Ed Zercher, BSN, RN, Washington State Nurses Association; Lindsey Grad, citizen; Wes McMahan, Registered Nurse.

CON: Michelle James, Providence St. Peter and Centralia Hospitals; Chelene Whiteaker,

Washington State Hospital Association; Roman Daniels-Brown, Washington State Medical Association; Ian Goodhew, University of Washington Medicine; Lisa Thatcher, Washington State Hospital Association.

Persons Signed In To Testify But Not Testifying (Ways & Means): No one.