

SENATE BILL REPORT

SB 5373

As of January 18, 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: Senators Conway, Saldaña, Hunt, Nguyen and Hasegawa.

Brief History:

Committee Activity: Labor & Commerce:

Brief Summary of 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, and prohibiting the employer from using prescheduled on-call time.
- Specifies that violations of the meal, rest break, and overtime provisions require employees to be compensated at double their rate of pay for an entire shift.
- Establishes a schedule of administrative penalties and authorizes administrative investigations for employer violations.
- Authorizes employees to bring a private right of action.

SENATE COMMITTEE ON LABOR & COMMERCE

Staff: Richard Rodger (786-7461)

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

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.

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.

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.

Summary of 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 an unforeseeable emergent circumstance or a clinical circumstance that may lead to patient harm without the employee's specific skill or expertise.

An employer may not rely on other employees who are assigned to the unit to cover for the employees who are taking meal or rest periods, with the effect of increasing the workload on these employees.

Employers must record when an employee takes or misses a meal or rest period. Employers may not use a default recoding system or record intermittent breaks, but must proactively record uninterrupted breaks taken and missed breaks. Each employer must transmit these records to the Department of Health on a quarterly basis. The Department of Health must post each employer's report of the number of missed meal or rest breaks on the department's web site, after redacting the names of any employees from the reports.

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. 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.

Penalties and Protections. Any employee who has missed a meal or rest period or is forced to work mandatory overtime in violation of the statutes must be compensated at double the rate of pay the employee would have received for the entire shift.

In addition, L&I must assess a fine of one hundred dollars per employee, per shift for each time an employee has missed a meal or rest period or forced to work mandatory overtime in violation of the statutes. The fine is increased to two hundred fifty dollars per employee, per shift after the third violation that occurs within thirty consecutive days. The L&I penalties increase every five years, beginning January 1, 2024, based on the changes to the consumer price index.

L&I may investigate any employer's entire business operation if there is a pattern of complaints by individual employees or if the employer has been found to have multiple violations within twelve consecutive months.

The refusal of an employee to work during a meal or rest period or work mandatory overtime, for reasons that are not exempted, is not grounds for counseling, discrimination, dismissal, discharge, or any other penalty, threat of reports for discipline, or employment decision adverse to the employee.

Aggrieved employees may bring a private right of action against an employer who violates the meal or rest period or work mandatory overtime provisions. The action may seek civil damages and such equitable relief as may be appropriate and a court may award reasonable attorneys' fees and costs to a prevailing employee.

Appropriation: None.

Fiscal Note: Requested on January 17, 2019.

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

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