
HOUSE BILL 2685

State of Washington 60th Legislature 2008 Regular Session

By Representatives Green, Morrell, Conway, Simpson, and Wood

Read first time 01/15/08. Referred to Committee on Commerce & Labor.

1 AN ACT Relating to hours of labor for nurses; amending RCW
2 49.28.130, 49.28.140, 49.28.150, and 72.01.042; adding a new section to
3 chapter 49.12 RCW; and adding a new section to chapter 49.28 RCW.

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

5 NEW SECTION. **Sec. 1.** A new section is added to chapter 49.12 RCW
6 to read as follows:

7 (1) Employees of health care facilities shall be allowed scheduled
8 meal and rest periods as specified in rules adopted by the department
9 of labor and industries under this chapter. Employees of health care
10 facilities are not engaged in the type of work that allows employees to
11 take intermittent rest periods in place of scheduled meal and rest
12 periods.

13 (2) The definitions in RCW 49.28.130 apply to this section.

14 NEW SECTION. **Sec. 2.** A new section is added to chapter 49.28 RCW
15 to read as follows:

16 In addition to the restrictions of RCW 49.28.140, no employer shall
17 permit any employee of any health care facility to work in excess of

1 twelve hours in any twenty-four hour period. This section does not
2 apply to unforeseeable emergent circumstances.

3 **Sec. 3.** RCW 49.28.130 and 2002 c 112 s 2 are each amended to read
4 as follows:

5 The definitions in this section apply throughout this section and
6 RCW 49.28.140 (~~and~~), 49.28.150, and section 2 of this act unless the
7 context clearly requires otherwise.

8 (1) "Employee" means a licensed practical nurse or a registered
9 nurse licensed under chapter 18.79 RCW employed by a health care
10 facility who is involved in direct patient care activities or clinical
11 services and receives an hourly wage.

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

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

21 (i) Hospices licensed under chapter 70.127 RCW(~~τ~~);

22 (ii) Hospitals licensed under chapter 70.41 RCW(~~τ~~);

23 (iii) Rural health care facilities as defined in RCW 70.175.020(~~τ~~
24 and);

25 (iv) Psychiatric hospitals licensed under chapter 71.12 RCW(~~τ~~ and
26 includes such facilities if owned and operated by a political
27 subdivision or instrumentality of the state));

28 (v) State hospitals as defined in RCW 72.23.010;

29 (vi) State veterans' homes as defined in RCW 72.36.035;

30 (vii) Residential habilitation centers listed in RCW 71A.20.020,
31 71A.20.030, and 71A.20.040;

32 (viii) Facilities owned and operated by the department of
33 corrections or by a governing unit as defined in RCW 70.48.020 in a
34 correctional institution as defined in RCW 9.94.049(1) that provide
35 health care services to inmates as defined in RCW 72.09.015; and

36 (ix) Facilities in an institution as defined in RCW 13.40.020(12)
37 or a detention facility as defined in RCW 13.40.020(9) that provide

1 health care services to juveniles committed to the custody of the
2 department of social and health services under RCW 13.40.185 or
3 confined in a detention facility.

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

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

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

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

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

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

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

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

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

35 **Sec. 4.** RCW 49.28.140 and 2002 c 112 s 3 are each amended to read
36 as follows:

37 (1) No employee of a health care facility may be required to work

1 overtime. Attempts to compel or force employees to work overtime are
2 contrary to public policy, and any such requirement contained in a
3 contract, agreement, or understanding is void.

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

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

10 (a) Because of any unforeseeable emergent circumstance;

11 (b) Because of prescheduled on-call time unless such on-call time
12 is used to fill vacancies resulting from chronic staff shortages;

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

17 (d) When an employee is required to work overtime to complete a
18 patient care procedure already in progress where the absence of the
19 employee could have an adverse effect on the patient, as long as the
20 health care facility made a good faith effort to schedule such patient
21 care procedures so that overtime would not be required.

22 **Sec. 5.** RCW 49.28.150 and 2002 c 112 s 4 are each amended to read
23 as follows:

24 The department of labor and industries shall investigate complaints
25 of violations of RCW 49.28.140 and sections 1 and 2 of this act. A
26 violation of RCW 49.28.140 or sections 1 and 2 of this act is a class
27 1 civil infraction in accordance with chapter 7.80 RCW, except that the
28 maximum penalty is one thousand dollars for each infraction up to three
29 infractions. If there are four or more violations of RCW 49.28.140,
30 sections 1 and 2 of this act, or any combination thereof for a health
31 care facility, the employer is subject to a fine of two thousand five
32 hundred dollars for the fourth violation, and five thousand dollars for
33 each subsequent violation. The department of labor and industries is
34 authorized to issue and enforce civil infractions according to chapter
35 7.80 RCW.

1 **Sec. 6.** RCW 72.01.042 and 1981 c 136 s 67 are each amended to read
2 as follows:

3 (1)(a) The hours of labor for each full time employee shall be a
4 maximum of eight hours in any work day and forty hours in any work
5 week.

6 (b) Employees required to work in excess of the eight-hour maximum
7 per day or the forty-hour maximum per week shall be compensated by not
8 less than equal hours of compensatory time off or, in lieu thereof, a
9 premium rate of pay per hour equal to not less than one-one hundred and
10 seventy-sixth of the employee's gross monthly salary: PROVIDED, That
11 in the event that an employee is granted compensatory time off, such
12 time off should be given within the calendar year and in the event that
13 such an arrangement is not possible the employee shall be given a
14 premium rate of pay: PROVIDED FURTHER, That compensatory time and/or
15 payment thereof shall be allowed only for overtime as is duly
16 authorized and accounted for under rules and regulations established by
17 the secretary.

18 (2) Overtime requirements for an employee under this section who is
19 also an employee of a health care facility under chapter 49.28 RCW are
20 subject to RCW 49.28.130 through 49.28.150 and sections 1 and 2 of this
21 act.

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