2501-S2 AMH COND SILV 183

**2SHB 2501** - H AMD **1134**

By Representative Condotta

**FAILED 02/14/2012**

Strike everything after the enacting clause and insert the following:

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

(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;

(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) Analyzes routine utilization trends to ensure that the hospital department's normal operating hours are consistent with these trends and only schedules employees to be on-call for hours outside the hospital department's normal operating hours;

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

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

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

((~~(d)~~)) (e) 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.

(8) "Utilization trends" means the process through which a hospital analyzes its patient care work to determine the volume of patients cared for by month of the year, day of the week, and hours of the day.

**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 when the employer has made a good faith effort to limit the use of on-call time to hours outside the hospital department's normal operating hours;

(c) Because an employee voluntarily accepted an on-call shift following a regularly scheduled shift and was called in to work the on-call shift;

(d) 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)~~)) (e) 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. The health care facility must make a good faith effort to ensure scheduled procedures do not routinely extend beyond the hospital department's normal operating hours."

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|  | EFFECT:   Strikes the underlying bill and changes the exceptions to the prohibition on mandatory overtime as follows:   * Limits the exception for prescheduled on-call time to situations where the employer made a good faith effort to limit the use of on-call time to hours outside a hospital department's normal operating hours. * Adds an exception when an employee voluntarily accepted an on-call shift following a regularly scheduled shift. * Defines "reasonable efforts" to obtain staffing to include analyzing routine utilization trends, making a hospital department's normal operating hours consistent with those trends, and only scheduling employees to be on-call for hours outside normal operating hours. * Requires the health care facility to make a good faith effort to ensure that scheduled procedures do not routinely extend beyond the hospital department's normal operating hours. |

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