

SENATE BILL REPORT

SB 6309

As Reported by Senate Committee On:
Labor, Commerce & Consumer Protection, February 2, 2012

Title: An act relating to meals and rest breaks for certain health care workers.

Brief Description: Requiring meals and rest breaks for certain health care workers.

Sponsors: Senators Prentice, Conway, Kohl-Welles, Keiser, Kline, Pridemore, Chase, Harper, Frockt, McAuliffe, Shin and Nelson.

Brief History:

Committee Activity: Labor, Commerce & Consumer Protection: 1/19/12, 1/31/12, 2/02/12 [DPS-WM, DNP].

SENATE COMMITTEE ON LABOR, COMMERCE & CONSUMER PROTECTION

Majority Report: That Substitute Senate Bill No. 6309 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Kohl-Welles, Chair; Conway, Vice Chair; Keiser and Kline.

Minority Report: Do not pass.

Signed by Senators Holmquist Newbry, Ranking Minority Member; King, Assistant Ranking Minority Member; Hewitt.

Staff: Ingrid Mungia (786-7423)

Background: Under the Industrial Welfare Act, it is unlawful for an employer to employ workers under conditions of labor that are detrimental to their health. The Department of Labor and Industries (Department) is authorized to conduct investigations into employment conditions and to adopt rules establishing employment standards.

The rules governing rest and meal periods require a meal period of at least 30 minutes. Employees are also allowed a paid rest period of at least ten minutes for each four hours worked. By administrative policy, the Department requires that the rest period be scheduled as near as possible to the midpoint of the four hours of working time. Where the nature of the work allows, employees may also take intermittent rest periods equivalent to ten minutes for each four hours worked.

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.

Summary of Bill (Recommended Substitute): Hospitals must provide employees uninterrupted meal and rest breaks. Meal breaks must be at least thirty minute starting after two hours and no more than five hours from the beginning of a shift. Rest breaks must be at least ten minutes for every four hours worked or as otherwise provided for in a collective bargaining agreement or other employer policy in the absence of a collective bargaining agreement.

Meal and rest breaks may be interrupted or delayed when: a national, state, or municipal government declares an emergency; the hospital activates its disaster plan; the hospital determines that an unforeseen disaster, catastrophic event, or other nonroutine extraordinary circumstance, either internal or external to the hospital will substantially affect or increase the need for health care or substantially reduce the hospital's capacity to provide health care; or the employee on, or scheduled for, break determines a clinical circumstance could lead to patient harm without the skill, expertise, or knowledge of the employee on or scheduled for a break.

Licensed hospitals must have and maintain one or more specific mechanisms under which employees are able to and do take meal and rest breaks. The mechanism must be implemented or maintained based on information from employees providing direct patient care on each unit and shift, management and other relevant sources. The mechanism must include: training during orientation for new managers and training of current managers; human resource staff and nurses on each unit concerning the importance of taking breaks; the importance of and a system for keeping records of breaks; and nonretaliation policies. Each hospital must collect, at a minimum, data on meal and rest breaks not taken by employees.

A hospital may not retaliate against or engage in any form of intimidation of an employee who reports a missed break or concerns regarding the hospital's practices regarding breaks. The hospital must promptly investigate any accusation of retaliation and take appropriate corrective action. When a hospital is found to be out of compliance with providing employees uninterrupted meal and rest breaks, the Department may at a minimum require the hospital to submit a corrective plan of action. In the event a hospital submits but fails to follow the corrective plan of action, the Department may impose a penalty of one hour of pay for each missed break from the employer to the affected employee.

The term employee, means a person who is involved in direct patient care activities or clinical services working for and on the premises of an acute care inpatient hospital, other than state-operated facilities, receives an hourly wage, or is covered by a collective bargaining agreement, and is a:

- licensed practical nurse or a licensed registered nurse;
- registered surgical technologist, when involved in direct patient care;
- certified diagnostic radiological technologist, when involved in direct care;
- licensed respiratory technician, when involved in direct care;
- certified nursing assistant, when involved in direct patient care; or
- cardiovascular invasive specialist, when involved in direct patient care.

EFFECT OF CHANGES MADE BY LABOR, COMMERCE & CONSUMER PROTECTION COMMITTEE (Recommended Substitute):

- exempts state hospitals;
- clarifies that L&I will investigate upon receiving a complaint;
- gives discretion to L&I to investigate complaints; and
- clarifies that the penalty of one hour of work also applies if a hospital fails to submit a corrective plan of action.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

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

Staff Summary of Public Testimony on Original Bill: PRO: The current standard that hospitals are applying is the intermittent break rule. Hospitals use this rule instead of applying rest breaks for their employees. This is a patient safety consideration as well as a consideration for employees. There was not a solution in the Ruckelshaus study. Failure to ensure adequate rest and meal periods leads to fatigue. Meal and rest breaks ensures quality patient care. Pilots and truckers have a requirement for rest breaks, but we have nothing for health care workers. Studies show fatigue puts patients at risk. Adequate meal and rest breaks are a continued problem. As consumers we want quality health care standards. We want the same standards throughout the state. Statutory changes are required for this issue. Over 100,000 people die each year from avoidable errors. This bill is a rational solution to the problem.

CON: Patient safety doesn't have to be about fatigue. This bill is one more distraction to my job. The documentation is burdensome in this bill. I am concerned about the ambiguous language in this bill. In all my work experience, the culture has always been about safety. I have never felt like I needed a break and didn't get a break. We have signed a petition that says we don't need this bill. There are two sides to the story. There are current Washington administrative codes that govern meal and rest breaks. The flexibility is in collective bargaining. Hospitals could be penalized for the amount of one hour of work for a missed ten-minute break. In a dynamic profession we need to be constantly changing and be flexible. This issue should be collectively bargained. The intermittent breaks means flexibility. A one-size solution does not fit everyone in this situation and this is best handled at the local level. The State Medical Association recognizes the importance of meal and rest breaks for workers of all industries. A solution is not to mandate in law meal and rest breaks. Breaks and meal time should be addressed in collective bargaining to reflect each hospitals individuals needs.

Persons Testifying: PRO: Senator Conway; Ellie Menzies, SEIU Healthcare 1199 NW; Susan E. Jacobsen, Sofia Aragon, WA State Nurses Assn.; Teresa Mosqueda, WA State Labor Council.

CON: Tracy Dunham, MultiCare, St. Josephs; Jim McRae, Virginia Mason; Vicki Christopherson, Providence; Katie Kolan, WA State Medical Assn.; Lisa Thatcher, WA State Hospital Assn.