

HOUSE BILL REPORT

HB 1732

As Passed House:
March 9, 2015

Title: An act relating to meal and rest breaks and mandatory overtime for certain health care employees.

Brief Description: Addressing meal and rest breaks and mandatory overtime for certain health care employees.

Sponsors: Representatives Reykdal, Riccelli, Ryu, S. Hunt, Peterson, Ormsby, Stanford, Goodman, Cody, Tharinger, Ortiz-Self, Bergquist, Fitzgibbon, Farrell, Sullivan, Dunshee, Moscoso, Appleton, Sells, Pollet, Robinson, Walkinshaw, Jinkins, Senn, Wylie, Lytton, Hudgins, Tarleton, Kagi, Moeller, Sawyer, Fey, Pettigrew, Gregerson, Orwall, Santos, Kirby, McBride, Takko, Gregory, Clibborn, Springer, Van De Wege, Blake, Kilduff and Hansen.

Brief History:

Committee Activity:

Labor: 2/3/15, 2/9/15 [DP];
Appropriations: 2/25/15, 2/26/15 [DP].

Floor Activity:

Passed House: 3/9/15, 52-46.

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, prohibiting the employer from using prescheduled on-call time to fill foreseeable staff shortages, and making other changes.

HOUSE COMMITTEE ON LABOR

Majority Report: Do pass. Signed by 5 members: Representatives Sells, Chair; Gregerson, Vice Chair; McCabe, Moeller and Ormsby.

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 2 members: Representatives Manweller, Ranking Minority Member; G. Hunt, Assistant Ranking Minority Member.

Staff: Trudes Tango (786-7384).

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: Do pass. Signed by 18 members: Representatives Hunter, Chair; Ormsby, Vice Chair; Carlyle, Cody, Dunshee, Hansen, Hudgins, S. Hunt, Jinkins, Kagi, Lytton, Pettigrew, Sawyer, Senn, Springer, Sullivan, Tharinger and Walkinshaw.

Minority Report: Do not pass. Signed by 12 members: Representatives Chandler, Ranking Minority Member; Parker, Assistant Ranking Minority Member; Wilcox, Assistant Ranking Minority Member; Buys, Haler, G. Hunt, MacEwen, Magendanz, Schmick, Stokesbary, Taylor and Van Werven.

Minority Report: Without recommendation. Signed by 2 members: Representatives Dent and Fagan.

Staff: Catrina Lucero (786-7192).

Background:

Meal and Rest Periods.

The Department of Labor and Industries (Department) 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 his or her 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.

Regarding rest periods, employees must receive a rest period of at least 10 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 10 minutes. Intermittent rest periods are intervals of short duration in which employees are allowed to rest and can include personal activities such as making personal phone 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 accept to work overtime, but cannot be required to do so or be retaliated against for refusing to work overtime. 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 pre-scheduled on-call time;
- when the employer has used reasonable efforts to obtain staffing; and
- 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.
- 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.

The hospital must record when an employee takes or misses a meal or rest period and maintain the records as required by the Department.

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 pre-scheduled 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.

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.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony (Labor):

(In support) This is an issue that should not be contractually negotiated. This bill is closing the loophole for non-nurses regarding mandatory overtime. Employers are creating mandatory overtime by pre-scheduling time. Employees have tried to fix this issue in staffing committees, but that process has not worked. The administrative rules allow for intermittent breaks but that means when a nurse goes to the bathroom or makes a phone call, that time is counted as the nurse's break. The results are that the nurse does not get a real rest break at all. The bill allows employees to take their break at any time so that there is flexibility. When employees are fatigued, it is not only a danger to patients, but also a danger to themselves.

(Opposed) Most hospitals have union contracts that provide meal and rest breaks. There are already administrative rules that apply. These requirements remove the professional autonomy and flexibility nurses currently have to take breaks when it makes sense for them to take breaks based on their patients' needs and their own personal needs. Requiring uninterrupted breaks creates a risk of harm to patients. It will cut off communication about patient conditions. In small rural facilities, employees work as a team and across departments to help relieve each other. Small hospitals have to be creative and this bill is too rigid. Use of on-call time is important to provide flexible services. This bill will increase the cost of care. The exceptions in the bill are too narrow and disrespects a nurse's decision-making and judgment.

Staff Summary of Public Testimony (Appropriations):

(In support) The fiscal estimate is overstated. A collective bargaining agreement (CBA) negotiated in 2010 already includes some of the parameters of this bill and it required documentation for when a nurse misses his or her breaks. An additional grievance was filed in 2014 over failure to document. This should provide better data about how often nurses are required to miss their breaks and compensate them accordingly. Facilities have flexibility in determining how to provide breaks. The bill is more flexible than the Department Labor and Industry (L&I) guidelines. The bill provides for reasonable break exemptions, for example, when a nurse is in a clinical setting and the only one able to provide certain care. The majority of the costs in the fiscal note are driven by Harborview. Harborview has a CBA that already requires that certain individuals be provided with uninterrupted rest breaks. Harborview does not receive appropriations from the State General Fund. An increase in costs at Harborview will not create costs for the state. The current L&I intermittent break

provision does not provide for adequate rest. This bill is needed because Washington does not currently have an equitable system when it comes to providing rest periods for health care workers. Not all health care workers have CBAs that cover uninterrupted break periods. Fatigue can lead to medical mistakes.

(Opposed) There are existing L&I rules and provisions in current CBAs that address the issues in this bill. No statute is needed. The bill is rigidly structured. More nurses will need to be hired to cover break periods. This will increase costs for hospitals. The bill requires an employer to record when and employee takes or misses a break. This will require a great deal of data collection. For rural hospitals this would require burdensome clerical tracking. The bill assumes that all hospital delivery of care is foreseeable. This is not a realistic assumption. The volume in many units varies.

Persons Testifying (Labor): (In support) Vanessa Petracelli and Kelly Bleiwiss, Service Employees International Union 1199; Anne Guerrein, United Food and Commercial Workers 21; and Sophia Aragon, Washington State Nurses Association.

(Opposed) Lisa Thatcher, Washington State Hospital Association; Laureen Driscoll, Swedish Cherry Hill; Jeannie Eylar, Pullman Regional Hospital; Melissa Cate, Swedish Medical Center; Gladys Cambell, Northwest One; and Sarah Schwen, Virginia Mason.

Persons Testifying (Appropriations): (In support) Sofia Aragon, Washington State Nurses Association; Chris Barton, Service Employees International Union 1199; and Alex Hur, Service Employees International Union 925.

(Opposed) Lisa Thatcher and Cassie Wells, Washington State Hospital Association.

Persons Signed In To Testify But Not Testifying (Labor): None.

Persons Signed In To Testify But Not Testifying (Appropriations): None.