

By Senator Kohl-Welles

E2SHB 2501 - S COMM AMD

By Committee on Labor, Commerce & Consumer Protection

1 Strike everything after the enacting clause and insert the
2 following:

3 "Sec. 1. RCW 49.28.130 and 2011 c 251 s 1 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 unless the context clearly requires
7 otherwise.

8 (1)(a) "Employee" means a ~~((licensed practical nurse or a
9 registered nurse licensed under chapter 18.79 RCW))~~ person who:

10 (i) Is employed by a health care facility ((who));

11 (ii) Is involved in direct patient care activities or clinical
12 services ((and));

13 (iii) Receives an hourly wage or is covered by a collective
14 bargaining agreement; and

15 (iv) Is a licensed practical nurse or registered nurse licensed
16 under chapter 18.79 RCW, a surgical technologist registered under
17 chapter 18.215 RCW, a diagnostic radiologic technologist or
18 cardiovascular invasive specialist certified under chapter 18.84 RCW,
19 a respiratory care practitioner licensed under chapter 18.89 RCW, or a
20 certified nursing assistant as defined in RCW 18.88A.020.

21 (b) "Employee" does not mean a person who:

22 (i) Is employed by a health care facility as defined in subsection
23 (3)(a)(v) of this section; and

24 (ii) Is a surgical technologist registered under chapter 18.215
25 RCW, a diagnostic radiologic technologist or cardiovascular invasive
26 specialist certified under chapter 18.84 RCW, a respiratory care
27 practitioner licensed under chapter 18.89 RCW, or a certified nursing
28 assistant as defined in RCW 18.88A.020.

29 (2) "Employer" means an individual, partnership, association,

1 corporation, the state, a political subdivision of the state, or person
2 or group of persons, acting directly or indirectly in the interest of
3 a health care facility.

4 (3)(a) "Health care facility" means the following facilities, or
5 any part of the facility, including such facilities if owned and
6 operated by a political subdivision or instrumentality of the state,
7 that operate on a twenty-four hours per day, seven days per week basis:

8 (i) Hospices licensed under chapter 70.127 RCW;

9 (ii) Hospitals licensed under chapter 70.41 RCW;

10 (iii) Rural health care facilities as defined in RCW 70.175.020;

11 (iv) Psychiatric hospitals licensed under chapter 71.12 RCW; or

12 (v) Facilities owned and operated by the department of corrections
13 or by a governing unit as defined in RCW 70.48.020 in a correctional
14 institution as defined in RCW 9.94.049 that provide health care
15 services (~~to inmates as defined in RCW 72.09.015~~).

16 (b) If a nursing home regulated under chapter 18.51 RCW or a home
17 health agency regulated under chapter 70.127 RCW is operating under the
18 license of a health care facility, the nursing home or home health
19 agency is considered part of the health care facility for the purposes
20 of this subsection.

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

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

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

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

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

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

1 (d) Seeks personnel from a contracted temporary agency when such
2 staffing is permitted by law or an applicable collective bargaining
3 agreement, and when the employer regularly uses a contracted temporary
4 agency.

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

10 **Sec. 2.** RCW 49.28.140 and 2002 c 112 s 3 are each amended to read
11 as follows:

12 (1) No employee of a health care facility may be required to work
13 overtime. Attempts to compel or force employees to work overtime are
14 contrary to public policy, and any such requirement contained in a
15 contract, agreement, or understanding is void.

16 (2) The acceptance by any employee of overtime is strictly
17 voluntary, and the refusal of an employee to accept such overtime work
18 is not grounds for discrimination, dismissal, discharge, or any other
19 penalty, threat of reports for discipline, or employment decision
20 adverse to the employee.

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

22 (a) Because of any unforeseeable emergent circumstance;

23 (b) Because of prescheduled on-call time necessary for immediate
24 and unanticipated patient care emergencies. The employer may not use
25 prescheduled on-call time to fill chronic or foreseeable staff
26 shortages. The exemption does not apply to a critical access hospital
27 designated under 42 U.S.C. Sec. 1395i-4;

28 (c) When the employer documents that the employer has used
29 reasonable efforts to obtain staffing. An employer has not used
30 reasonable efforts if overtime work is used to fill vacancies resulting
31 from chronic staff shortages; or

32 (d) When an employee is required to work overtime to complete a
33 patient care procedure already in progress where the absence of the
34 employee could have an adverse effect on the patient. The employer may
35 not schedule nonemergency procedures that would require overtime."

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1 On page 1, line 2 of the title, after "facilities;" strike the
2 remainder of the title and insert "and amending RCW 49.28.130 and
3 49.28.140."

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