
SENATE BILL 5907

State of Washington

61st Legislature

2009 Regular Session

By Senators Keiser, Swecker, and Roach

Read first time 02/06/09. Referred to Committee on Labor, Commerce & Consumer Protection.

1 AN ACT Relating to limiting mandatory overtime for corrections
2 officers and sergeants employed by a city or county jail; and amending
3 RCW 49.28.130 and 49.28.140.

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

5 **Sec. 1.** RCW 49.28.130 and 2002 c 112 s 2 are each amended to read
6 as follows:

7 The definitions in this section apply throughout this section and
8 RCW 49.28.140 and 49.28.150 unless the context clearly requires
9 otherwise.

10 (1) "Employee" means:

11 (a) A licensed practical nurse or a registered nurse licensed under
12 chapter 18.79 RCW employed by a health care facility who is involved in
13 direct patient care activities or clinical services and receives an
14 hourly wage; or

15 (b) A corrections officer or sergeant employed by a city or county
16 jail located in a county with a population of more than one million
17 five hundred thousand.

18 (2) "Employer" means:

1 (a) An individual, partnership, association, corporation, state
2 institution, political subdivision of the state, or person or group of
3 persons, acting directly or indirectly in the interest of a health care
4 facility; or

5 (b) A city or county that is primarily responsible for the
6 operation of a jail.

7 (3) "Health care facility" means the following facilities, or any
8 part of the facility, that operates on a twenty-four hours per day,
9 seven days per week basis: Hospices licensed under chapter 70.127 RCW,
10 hospitals licensed under chapter 70.41 RCW, rural health care
11 facilities as defined in RCW 70.175.020, and psychiatric hospitals
12 licensed under chapter 71.12 RCW, and includes such facilities if owned
13 and operated by a political subdivision or instrumentality of the
14 state. If a nursing home regulated under chapter 18.51 RCW or a home
15 health agency regulated under chapter 70.127 RCW is operating under the
16 license of a health care facility, the nursing home or home health
17 agency is considered part of the health care facility for the purposes
18 of this subsection.

19 (4) "Overtime" means the hours worked in excess of an agreed upon,
20 predetermined, regularly scheduled shift within a twenty-four hour
21 period:

22 (a) Not to exceed twelve hours in a twenty-four hour period or
23 eighty hours in a consecutive fourteen-day period for employees defined
24 in subsection (1)(a) of this section; or

25 (b) Not to exceed eight and seventeen one-hundredths hours in a
26 twenty-four hour period or forty and eighty-five one-hundredths hours
27 in a seven-day period, where the hours are worked in only five out of
28 the seven days, for employees defined in subsection (1)(b) of this
29 section.

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

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

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

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

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

6 (d) Seeks personnel from a contracted temporary agency when such
7 staffing is permitted by law or an applicable collective bargaining
8 agreement, and when the employer regularly uses a contracted temporary
9 agency.

10 (7) "Unforeseeable emergent circumstance" means (a) any unforeseen
11 declared national, state, or municipal emergency; (b) when a health
12 care facility disaster plan is activated; ~~((or))~~ (c) any unforeseen
13 disaster or other catastrophic event which substantially affects or
14 increases the need for health care services; or (d) any unforeseen
15 event that poses a substantial risk to public safety or the safety of
16 other corrections officers.

17 (8) "Jail" means the same as in RCW 70.48.020.

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

20 (1) Except as provided in subsection (3) of this section:

21 (a) No employee of a health care facility may be required to work
22 overtime. Attempts to compel or force employees of health care
23 facilities to work overtime are contrary to public policy, and any such
24 requirement contained in a contract, agreement, or understanding is
25 void; and

26 (b) No employee as defined in RCW 49.28.130(1)(b) may be required
27 to work more than four hours of overtime per day. Attempts to compel
28 or force employees to work overtime are contrary to public policy, and
29 any such requirement contained in a contract, agreement, or
30 understanding is void.

31 (2) The acceptance by any employee of overtime is strictly
32 voluntary, and the refusal of an employee to accept such overtime work
33 is not grounds for discrimination, dismissal, discharge, or any other
34 penalty, threat of reports for discipline, or employment decision
35 adverse to the employee.

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

37 (a) Because of any unforeseeable emergent circumstance;

1 (b) Because of prescheduled on-call time;

2 (c) When the employer documents that the employer has used
3 reasonable efforts to obtain staffing. An employer has not used
4 reasonable efforts if overtime work is used to fill vacancies resulting
5 from chronic staff shortages; or

6 (d) When an employee is required to work overtime to complete a
7 patient care procedure already in progress where the absence of the
8 employee could have an adverse effect on the patient.

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