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**SENATE BILL 5373**

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**State of Washington**                      **66th Legislature**                      **2019 Regular Session**

**By** Senators Conway, Saldaña, Hunt, Nguyen, and Hasegawa

Read first time 01/18/19. Referred to Committee on Labor & Commerce.

1            AN ACT Relating to meal and rest breaks and mandatory overtime  
2 for certain health care employees; amending RCW 49.28.130 and  
3 49.28.140; adding a new section to chapter 49.12 RCW; and prescribing  
4 penalties.

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

6            NEW SECTION.    **Sec. 1.** A new section is added to chapter 49.12  
7 RCW to read as follows:

8            (1) An employer shall provide employees with meal and rest  
9 periods as required by law, subject to the following:

10            (a) Rest periods may be taken at any point during each work  
11 period during which the employee is required to receive a rest  
12 period; and

13            (b) Meal and rest periods must be uninterrupted, and an employer  
14 may not require an employee to take intermittent meal or rest  
15 periods. This subsection (1)(b) does not apply when there is:

16            (i) An unforeseeable emergent circumstance, as defined in RCW  
17 49.28.130; or

18            (ii) A clinical circumstance that may lead to patient harm  
19 without the specific skill or expertise of the employee taking a meal  
20 or rest period.

1 (2) The employer may not rely on other employees who are assigned  
2 to the unit to cover for the employees who are taking meal or rest  
3 periods, with the effect of increasing the workload on these  
4 employees.

5 (3) The employer must record when an employee takes or misses a  
6 meal or rest period. The employer may not use a default recoding  
7 system or record intermittent breaks, but must proactively record  
8 uninterrupted breaks taken and missed breaks. Each employer must  
9 transmit these records to the department of health on a quarterly  
10 basis. The department of health must post each employer's report of  
11 the number of missed meal or rest breaks on the department of  
12 health's web site, after redacting the names of any employees from  
13 the reports.

14 (4)(a) Any employee who has missed a meal or rest period in  
15 violation of this section must be compensated at double the rate of  
16 pay the employee would have received for the entire shift.

17 (b)(i) In addition to the compensation required under (a) of this  
18 subsection, the department must assess a fine of one hundred dollars  
19 per employee, per shift for each time an employee has missed a meal  
20 or rest period in violation of this section. The fine is increased to  
21 two hundred fifty dollars per employee, per shift after the third  
22 violation that occurs within thirty consecutive days.

23 (ii) The department must increase the penalties contained in this  
24 subsection (4)(b) every five years, beginning January 1, 2024,  
25 calculated to the nearest cent using the consumer price index for  
26 urban wage earners and clerical workers or a successor index.

27 (iii) The department may investigate any employer's entire  
28 business operation if there is a pattern of complaints by individual  
29 employees or if the employer has been found to have multiple  
30 violations, under this subsection, within twelve consecutive months.

31 (5) The refusal of an employee to work during a meal or rest  
32 period, that is not exempted under subsection (1)(b)(i) or (ii) of  
33 this section, is not grounds for counseling, discrimination,  
34 dismissal, discharge, or any other penalty, threat of reports for  
35 discipline, or employment decision adverse to the employee.

36 (6) Nothing in this section prevents an aggrieved employee from  
37 bringing a private right of action seeking civil damages and  
38 equitable relief as may be appropriate. A court in such action may  
39 award reasonable attorneys' fees and costs to a prevailing employee.

1 (7) For purposes of this section, the following terms have the  
2 following meanings:

3 (a) "Employee" means a person who:

4 (i) Is employed by a health care facility;

5 (ii) Is involved in direct patient care activities or clinical  
6 services;

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

9 (iv) Is a licensed practical nurse or registered nurse licensed  
10 under chapter 18.79 RCW, a surgical technologist registered under  
11 chapter 18.215 RCW, a diagnostic radiologic technologist or  
12 cardiovascular invasive specialist certified under chapter 18.84 RCW,  
13 a respiratory care practitioner licensed under chapter 18.89 RCW, or  
14 a nursing assistant-certified as defined in RCW 18.88A.020.

15 (b) "Employer" means hospitals licensed under chapter 70.41 RCW.

16 **Sec. 2.** RCW 49.28.130 and 2011 c 251 s 1 are each amended to  
17 read as follows:

18 The definitions in this section apply throughout this section and  
19 RCW 49.28.140 and 49.28.150 unless the context clearly requires  
20 otherwise.

21 (1) (a) "Employee" means a ((licensed practical nurse or a  
22 registered nurse licensed under chapter 18.79 RCW)) person who:

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

24 (ii) Is involved in direct patient care activities or clinical  
25 services ((and));

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

28 (iv) Is a licensed practical nurse or registered nurse licensed  
29 under chapter 18.79 RCW, a surgical technologist registered under  
30 chapter 18.215 RCW, a diagnostic radiologic technologist or  
31 cardiovascular invasive specialist certified under chapter 18.84 RCW,  
32 a respiratory care practitioner licensed under chapter 18.89 RCW, or  
33 a certified nursing assistant as defined in RCW 18.88A.020.

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

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

37 (ii) Is a surgical technologist registered under chapter 18.215  
38 RCW, a diagnostic radiologic technologist or cardiovascular invasive  
39 specialist certified under chapter 18.84 RCW, a respiratory care

1 practitioner licensed under chapter 18.89 RCW, or a certified nursing  
2 assistant as defined in RCW 18.88A.020.

3 (2) "Employer" means an individual, partnership, association,  
4 corporation, the state, a political subdivision of the state, or  
5 person or group of persons, acting directly or indirectly in the  
6 interest of a health care facility.

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

12 (i) Hospices licensed under chapter 70.127 RCW;

13 (ii) Hospitals licensed under chapter 70.41 RCW;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 (3) The employer may not use prescheduled on-call time to fill  
23 chronic or foreseeable staff shortages.

24 (4) This section does not apply to overtime work that occurs:

25 (a) Because of any unforeseeable emergent circumstance;

26 (b) Because of prescheduled on-call time necessary for immediate  
27 and unanticipated patient care emergencies;

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  
31 resulting 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  
35 may not schedule nonemergency procedures that would require overtime.

36 (5) (a) Any employee who has been compelled or forced to work  
37 overtime in violation of this section must be compensated at double  
38 the rate of pay the employee would have received for the entire  
39 shift.

1 (b) (i) In addition to the compensation required under (a) of this  
2 subsection, the department must assess a fine of one hundred dollars  
3 per employee, per shift for each time an employee has been compelled  
4 or forced to work overtime in violation of this section. The fine is  
5 increased to two hundred fifty dollars per employee, per shift after  
6 the third violation that occurs within thirty consecutive days.

7 (ii) The department must increase the penalties contained in this  
8 subsection (5)(b) every five years, beginning January 1, 2024,  
9 calculated to the nearest cent using the consumer price index for  
10 urban wage earners and clerical workers or a successor index.

11 (iii) The department may investigate any employer's entire  
12 business operation if there is a pattern of complaints by individual  
13 employees or if the employer has been found to have multiple  
14 violations, under this subsection, within twelve consecutive months.

15 (6) Nothing in this section prevents an aggrieved employee from  
16 bringing a private right of action seeking civil damages and  
17 equitable relief as may be appropriate. A court in such action may  
18 award reasonable attorneys' fees and costs to a prevailing employee.

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