
OLR Bill Analysis

sHB 5357

AN ACT CONCERNING MANDATORY OVERTIME FOR NURSES IN HOSPITALS.

SUMMARY

This bill generally expands restrictions on hospitals' ability to require nurses to work overtime and also applies the restrictions to home health care agencies. It places new conditions on how and when overtime can be worked or required, and it prohibits any retaliation against a nurse who refuses to work overtime. The bill also requires hospitals and home health care agencies to report all mandatory overtime occurrences to the Department of Public Health (DPH). Additionally, it creates a new enforcement mechanism for potential violations.

Current law prohibits hospitals from requiring a nurse to work more than a predetermined scheduled work shift as long as the shift is determined and communicated at least 48 hours before it starts. The bill categorizes this excess work as overtime, regardless of the shift length, and prohibits hospitals and home health care agencies from requiring nurses to work overtime, with certain exceptions. It also expands the prohibition by additionally categorizing as overtime working (1) more than 12 hours in a 24-hour period, (2) during the 10-hour period immediately following a previous shift of at least eight hours, or (3) more than 48 hours in any hospital-defined work week.

Current law prohibits hospitals from using a nurse's refusal to accept additional hours as grounds for discrimination, dismissal, discharge, or any other penalty or adverse employment decision. Similarly, the bill prohibits hospitals and home health care agencies from discriminating, discharging, disciplining, threatening to discipline or discharge, or otherwise retaliating against a nurse for refusing to work overtime.

Current law allows nurses to volunteer to work hours in addition to their scheduled work shifts. The bill similarly allows nurses to volunteer

to work overtime, but it prohibits them from being allowed to work more than 16 consecutive hours in a 24-hour period. The bill also requires that nurses have at least 10 consecutive off-duty hours after working 16 consecutive hours.

Current law establishes several exceptions to the prohibition on mandatory excess hours. The bill generally retains these exceptions with respect to mandatory overtime, but only when a patient's safety requires it and there is no reasonable alternative. The bill also requires hospitals and home health care agencies to make a good faith effort to cover the overtime hours on a voluntary basis before requiring a nurse to work overtime.

Under the bill, as under current law, nurses include registered nurses, licensed practical nurses, and nurse's aides.

EFFECTIVE DATE: July 1, 2022

EXCEPTIONS TO PROHIBITION ON MANDATORY OVERTIME

Current law allows nurses to work excess hours if:

1. they are participating in a surgical procedure;
2. they are working in a critical care unit, until they are relieved by another nurse starting a scheduled work shift;
3. it is a public health emergency; or
4. it is an institutional emergency (e.g., adverse weather conditions, catastrophe, or widespread illness) that, in the hospital administrator's opinion, will significantly reduce the number of nurses available for a scheduled work shift, as long as the hospital administrator has made a good faith effort to mitigate the institutional emergency's impact on nurse availability.

The bill generally retains these exceptions and applies them to its prohibition on mandatory overtime. The bill specifies that the exception for nurses participating in surgical procedures applies to ongoing procedures.

Additionally, the bill prohibits hospitals and home health care agencies from requiring mandatory overtime (1) as a regular practice to provide appropriate staffing for the necessary level of patient care or (2) in any situation resulting from routine staffing needs caused by typical staffing patterns, expected absenteeism levels, or approved time off (i.e., vacation, holidays, sick leave, and personal leave).

Collective Bargaining Agreements

Current law also exempts from the prohibition any nurse covered by a collective bargaining agreement that contains provisions addressing mandatory overtime. The bill instead exempts any nurse covered by a bona fide collective bargaining agreement (1) in effect before July 1, 2022, that addresses mandatory overtime until the agreement expires or (2) that applies to state employees, to the extent the agreement permits mandatory overtime. In the latter case, mandatory overtime (1) for reasons exempted from the bill's prohibition is a mandatory subject of bargaining and (2) for all other reasons is a permissible subject of bargaining.

The bill prohibits its provisions from being construed to alter or impair a bona fide collective bargaining agreement's terms that additionally restrict or limit mandatory overtime.

REPORTING REQUIREMENT

The bill requires that each hospital and home health care agency (1) report to DPH all mandatory overtime occurrences and the circumstances under which mandatory overtime was required and (2) provide a copy of the report to the hospital's or agency's staffing committee. (It is unclear whether home health care agencies have staffing committees. Also, the bill does not specify how frequently the hospitals and agencies must file reports and provide copies.)

Under the bill, the reports are public documents and must include the following information:

1. the occurrence's date;
2. an occurrence narrative, including the type of exception that

permitted the hospital or agency to use mandatory overtime or certification that the mandatory overtime was permitted under the exceptions for collective bargaining (see above);

3. how many mandatory overtime hours the nurse was required to work; and
4. a certification that the mandatory overtime was required for patient safety, there was no reasonable alternative to mandatory overtime, and the hospital or agency made a good faith effort to seek volunteers.

PENALTIES

The bill allows any nurse or group of nurses to file a civil action against a hospital or home health care agency that violates the bill's provisions. Under the bill, a nurse or group that prevails in a civil action must be awarded actual damages, removal of any discipline from the employee's personnel file, attorney's fees, and the following statutory damages:

1. for violations of the bill's provisions prohibiting mandatory overtime, restricting voluntary overtime, and requiring a good faith effort to cover hours on a voluntary basis before requiring mandatory overtime, at least \$250 and up to \$1,000 for each violation; and
2. for violations of the bill's reporting requirement, at least \$100 and up to \$500 for each violation.

Under the bill, nurses or groups of nurses who prevail in a civil action but are no longer employed by the hospital or agency must be awarded reinstatement to their jobs with backpay.

COMMITTEE ACTION

Labor and Public Employees Committee

Joint Favorable Substitute

Yea 9 Nay 4 (03/22/2022)