



*March 27, 2015 (update)*

## **Overtime scheduling for nurses**

*What you should know about the law restricting mandatory overtime for nurses*

### **What is the purpose of this law?**

The purpose of this law – [RCW 49.28.130](#) through RCW 49.28.150 – is to restrict health care facilities from requiring licensed practical nurses (LPNs) and registered nurses (RNs) to work overtime in excess of their agreed upon, regularly scheduled shifts. Reasonable safeguards should be in place to limit overtime and maintain appropriate patient care. The rationale for this law is to protect nurses and promote patient safety and quality health care.

### **What does the law say?**

No LPN or RN employed by a health care facility covered by this law may be required to work overtime unless one of four limited exceptions described below applies. A covered nurse may choose to accept overtime work voluntarily. Employers may not discriminate, dismiss, discharge, threaten discipline, penalize or make any adverse employment decision based on a covered nurse's refusal to accept overtime work.

### **Who is covered by this law?**

LPNs and RNs who work in health care facilities as defined by this law, who are involved in direct patient care activities or clinical services, and who receive an hourly wage are covered. Direct patient care activities and clinical services are not defined in the law. Some examples of nurses who provide clinical services and would be covered if they receive an hourly wage are:

- Diabetic educators
- Staff educators
- Clinical specialists
- Pain management nurses
- Research nurses
- Nurses in various labs – sleep, cardiac, GI, etc.
- Case managers
- Telephone consulting nurses

A nurse's status as "part time" or "full time" does not affect coverage under this law.

### **What constitutes a "health care facility" for the purposes of this law?**

The law protects nurses who work in certain licensed facilities which operate 24 hours per day, seven days a week. These facilities include: hospices, acute-care hospitals, rural health care facilities, private, county or municipal psychiatric hospitals, and nursing homes or home health agencies that are operating under the license of a 24hour health care facility.

Hospices include hospice care centers and hospice agencies providing in-home hospice services.

Nursing homes operating under their own licenses issued by the Department of Social and Health Services (DSHS) are not considered health care facilities. However, if a nursing home is operated under the license of a health care facility, it will be considered part of the health care facility, so nurses working there will be covered. Similarly, nurses working in long-term care wings of acute-care hospitals will be covered. Home health agencies operating under the license of health care facility will also be considered part of the health care facility. Home health agencies operating under their own licenses issued by the Department of Health are not considered health care facilities.

Facilities owned and operated by the Department of Corrections or a city or a county in a correctional institution providing health care services to detainees and inmates are considered health care facilities for the purposes of this law. State psychiatric hospitals and state facilities operated by DSHS are not considered health care facilities for the purposes of this law.

### **What is meant by “overtime”?**

“Overtime” means hours worked in excess of an agreed upon, predetermined, regularly scheduled shift not to exceed 12 hours in a 24-hour period or 80 hours in a consecutive 14-day period. The criteria for what constitutes overtime is determined by an employee’s usual shift length. For example, if an employee is regularly scheduled to work an eight hour shift, any time worked beyond eight hours would be considered overtime for the purposes of this law.

### **Are there any exceptions to this law?**

There are four exceptions to the law’s prohibition of mandatory overtime:

- 1) When overtime is caused by an unforeseeable emergent circumstance;
- 2) When overtime is caused by prescheduled on-call time;
- 3) When the employer documents its reasonable efforts to obtain staffing but cannot avoid overtime;
- 4) When an employee is required to work overtime to complete a patient care procedure already in progress and it could be detrimental to the patient if the employee left.

Unless one of these exceptions applies, an employer may not require a covered nurse to work overtime.

### **What is meant by “unforeseeable emergent circumstance”?**

When an employer cannot anticipate an emergency circumstance in advance, the situation may fall under the “unforeseeable emergent circumstance” exception. The law defines this as:

- Any unforeseen declared national, state or municipal emergency;
- When a health care facility disaster plan is activated; or
- Any unforeseen disaster or other catastrophic event that substantially affects or increases the need for health-care services.

### **What is meant by “prescheduled on-call time”?**

On-call time means time spent by a covered nurse who is not working on the employer’s premises but who is compensated for being available or who has agreed to be available to return

to the premises on short notice as a condition of employment. The on-call time must be prescheduled in order to fall under this exception. An employer may not place an employee on call in a last-minute effort to cover an open shift. Rather, the employee must be scheduled on call in accordance with the employer’s normal scheduling procedures and/or collective bargaining agreement.

**What is meant by “reasonable efforts”?**

Reasonable efforts to obtain staffing include:

- Seeking qualified staff who are willing to volunteer for extra work;
- Contacting qualified staff who have made themselves available for extra work;
- Seeking the use of qualified per diem staff; and
- Seeking personnel from a contracted temporary staffing agency, as permitted by law or a collective bargaining agreement, when the employer regularly uses a temporary agency.

Overtime work caused by an employer’s use of overtime to fill vacancies resulting from chronic staff shortages does not fall under the “reasonable efforts” exception. An employer must document its efforts to obtain staffing in order to meet this exception.

**What constitutes a chronic staff shortage?**

Adequate staffing will vary among health care facilities. To be chronic, vacancies at a health care facility must be either long-standing or frequently recurring. An example of a long-standing vacancy is a vacant position that the health care facility leaves open and does not fill. For example, where the full complement of nurses in an ICU is 12 and there are two unfilled positions, a chronic blank spot in the schedule would occur. A frequently recurring vacancy could be short term but often repeated, such as when staff vacations, medical leaves, scheduled leaves of absence and other absences that a health care facility can readily anticipate create blank spots in the schedule. The table below illustrates whether the following potential staffing situations meet the “reasonable efforts” exception:

Staffing Situation	Does it meet the “reasonable efforts” exception?
Unfilled positions resulting in holes in the schedule	No
Anticipated gaps in the schedule due to planned vacation, medical leave or other leave of absence	No
Frequently recurring increases in census such that the scheduled complement of nurses is inadequate	No
Unanticipated increases in census (patient count) that demands additional staffing	Yes
Same-day sick calls or other unanticipated absences	Yes

### **When would requiring a nurse to work overtime fall under the “procedure already in process” exception?**

A nurse may be required to work overtime to complete a procedure already in progress where the absence of the employee could have an adverse effect on the patient. This could include when a nurse:

- needs to stay long enough for the patient to recover from the procedure
- needs to complete documentation after an emergency situation or a procedure
- has skills that no other nurse would have
- is the only nurse who has the knowledge of some piece of equipment or procedure

The determining factor for this exception is whether the absence of the nurse could have an adverse effect on the patient.

### **What is the enforcement role for the Department of Labor & Industries?**

The Department of Labor and Industries (L&I) is required to investigate complaints of violations of this law. The law authorizes L&I to issue and enforce civil infractions in accordance with chapter 7.80 RCW. A civil infraction will be accompanied by a monetary penalty of up to \$1,000 for each infraction up to three infractions, \$2,500 for the fourth violation, and \$5,000 for each subsequent violation.

### **How do you file a complaint regarding mandatory overtime?**

File a Worker Rights Complaint online or fill out a Worker Rights Complaint form (F700-148-000) and submit it to any of L&I’s service locations or to:

Department of Labor and Industries  
Employment Standards Program  
P.O. Box 44510  
Olympia WA 98504-4510

- Please fill out sections A, B, D, and E of the Worker Rights Complaint. You do not need to fill out section C. Please include: Whether you are an LPN or RPN and your job title;
- Whether you receive an hourly wage;
- The type of facility where you are employed, i.e. acute-care hospital, hospice, private psychiatric hospital or nursing home operated by an acute-care hospital; and
- The circumstances in which you were required to work overtime.

### **Where can I turn if I have questions?**

Contact Employment Standards at 360-902-5316 or [esgeneral@Lni.wa.gov](mailto:esgeneral@Lni.wa.gov).

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