

## ADMINISTRATIVE POLICY



### STATE OF WASHINGTON DEPARTMENT OF LABOR AND INDUSTRIES EMPLOYMENT STANDARDS

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**TITLE: LAW RESTRICTING MANDATORY OVERTIME FOR NURSES**      **NUMBER: ES.A.11**

**CHAPTER: [RCW 49.28.130](#) through RCW 49.28.150**      **ISSUED: 8/28/02**  
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#### ADMINISTRATIVE POLICY DISCLAIMER

This policy is designed to provide general information in regard to the current opinions of the Department of Labor & Industries on the subject matter covered. This policy is intended as a guide in the interpretation and application of the relevant statutes, regulations, and policies, and may not be applicable to all situations. This policy does not replace applicable RCW or WAC standards. If additional clarification is required, the Program Manager for Employment Standards should be consulted.

This document is effective as of the date of print and supersedes all previous interpretations and guidelines. Changes may occur after the date of print due to subsequent legislation, administrative rule, or judicial proceedings. The user is encouraged to notify the Program Manager to provide or receive updated information. This document will remain in effect until rescinded, modified, or withdrawn by the Director or his or her designee.

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### 1. 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) or 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 to promote patient safety and quality health care.

### 2. 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 applies, as described under Question 6 below. 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 as described in Questions 5 and 6 below.

### 3. Who is covered by this law?

LPNs and RNs who work in covered health care facilities, are involved in direct patient care or clinical services and receive an hourly wage are covered. See [RCW 49.28.130\(1\)](#). In addition to the "typical" bedside staff nurse, there are many other examples of nursing staff receiving an hourly wage who are also covered. The following non-exhaustive list provides some **examples** of positions that provide direct patient care or clinical services that may be covered:

- 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 whether a nurse is covered by this law.

#### **4. What constitutes a “health care facility” for the purpose of this law?**

The law protects nurses who work in certain licensed facilities that operate 24 hours per day, seven days per week. These facilities include: hospices; acute-care hospitals; rural health care facilities; private, county or municipal psychiatric facilities; nursing homes or home health agencies operating under the license of a 24-hour health care facility; and health care facilities in certain correctional institutions. See [RCW 49.28.130\(3\)](#).

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

A nursing home operating under its own license issued by the Department of Social and Health Services (DSHS) is not considered a “health care facility” for the purpose of this law. However, if a nursing home is operating under the license of a health care facility, it is considered part of that 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.

A home health agency operating under the license of a health care facility will also be considered part of the health care facility. A home health agency operating under its own license issued by the Department of Health is not considered a “health care facility.”

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

#### **5. 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. See [RCW 49.28.130\(4\)](#). 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 8-hour shift, any time worked beyond 8 hours is considered overtime for the purpose of this law.

#### **6. 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 reasonable efforts to obtain staffing but cannot avoid overtime; or
- 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. [See RCW 49.28.140.](#)

### **7. 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. [See RCW 49.28.130\(7\).](#)

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

On-call time means time spent by an employee who is not working on the employer’s premises but who is compensated for being available or who, as a condition of employment, has agreed to be available on short notice if needed. [See RCW 49.28.130\(5\).](#) The on-call time must be prescheduled to fall under this exception. [See RCW 49.28.140\(3\)\(b\).](#) A facility 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 facility’s normal scheduling procedures and/or collective bargaining agreement.

Examples where such prescheduled on-call time is used include surgical procedures or specialty diagnostic procedure labs like gastroenterology and cardiology. Also, an example of an in-home hospice agency on-call situation includes when staff members are regularly prescheduled for on-call shifts to cover after-hours triage and patient visits from 5 p.m. to 8 a.m. and on weekends, in some situations.

### **9. 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. [See RCW 49.28.130\(6\).](#)

Overtime work caused by an employer’s use of mandatory 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 the exception.

### **10. What constitutes a chronic staff shortage?**

Multiple factors impact what determines staffing adequacy and this will vary among facilities. To be chronic, such vacancies must be either (1) long-standing or (2) frequently recurring. A long-standing vacancy would result from a position that is open and not filled by the facility within a reasonable period of time. For example, where the full complement of nurses on an ICU is 12 and there are 2 unfilled positions, this could result in a “chronic” blank spot in the schedule if not filled in a reasonable period of time. By contrast, “frequently recurring” vacancies are the kind of blanks that result from staff vacations,

medical leaves, leaves of absence and other absences that should be readily anticipated by the facility. The reasonable efforts exemption in the law does not apply to overtime work that is used to fill vacancies resulting from chronic staff shortages.

The table below illustrates whether the following potential staffing situations could meet the "reasonable efforts" exception:

<b>Staffing Situation</b>	<b>Can the facility use the reasonable efforts exception?</b>
Unfilled positions resulting in holes in the schedule	No
Anticipated gaps in the schedule due to planned vacation, medical leave or leave of absence	No
Frequently recurring increases in census such that the scheduled complement of nurses is inadequate	No
Unanticipated increases in census that demands additional staffing	Yes
Same-day sick call or other unanticipated absence	Yes

### **11. When would requiring a nurse to work overtime fall under the "procedure already in progress" exception?**

An employer may require a nurse to work overtime to complete a procedure already in progress where the absence of the employee could have an adverse effect on the patient. See [RCW 49.28.140\(3\)\(d\)](#). This could include when:

- There is an emergency code in progress (trauma, cardiac arrest, stroke);
- A nurse needs to complete documentation after an emergency situation;
- A nurse has skills that no other nurse would have;
- A nurse is the only nurse with knowledge of a piece of equipment or a procedure;
- A nurse is completing outpatient surgical or specialty procedures, such as those performed in a cardiac or gastroenterology lab that is located within a 24-hour hospital facility; or
- In outpatient surgery or specialty clinics that operate with a single shift, a nurse may have to stay long enough for the patient to recover and be released.

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

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

Effective June 13, 2002, the Department of Labor & 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. See [RCW 49.28.150](#).

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

Fill a [Worker Rights Complaint](#) online or send a [Worker Rights Complaint](#) to:

Department of Labor & Industries  
Employment Standards Program  
PO Box 44510  
Olympia, WA 98504-4510

Please fill out Sections A, B, D and E of the complaint form. You do not need to fill out Section C. Please include:

- Whether you are an RN or LPN and your job title;
- Whether you receive an hourly wage;
- The type of facility where you are employed; and
- The circumstances in which you were required to work overtime.

**15. Where can I turn if I have questions?**

Call Employment Standards at 1-866-219-7321 or 360-902-5316 or send an email to: [esgeneral@lni.wa.gov](mailto:esgeneral@lni.wa.gov).

(August 28, 2002, updated October 31, 2003 and December 21, 2016)