

## Restricting Mandatory Overtime (for Covered) Registered Nurses

### Purpose/Overview

This document provides information on mandatory overtime restrictions for registered nurses. Washington's mandatory overtime law restricts when healthcare facilities may require certain employees to work overtime. Per law, a covered employer may not require a covered employee to work overtime unless specific exceptions apply.

### Covered Healthcare Facilities that are Subject to the Law Restricting Mandatory Overtime

Reference: [HLS.A.1](#) (p. 2-3)

Covered health care facilities operate on a twenty-four hour per day, seven-day-a-week basis and include:

1) hospitals (and nursing homes/home health agencies operating under a healthcare facility license), 2) hospices, 3) rural health care facilities, 4) psychiatric hospitals, and 5) facilities owned and operated by the Department of Corrections.

(Chapter 70.41 RCW)

*Healthcare facilities not designated as a licensed facility or don't operate twenty-four hour per day/seven-day-a-week are not covered.*

### Mandatory Overtime: Employee Protections (until 1/1/2025)

Reference: [HLS.A.1](#) (p. 1-2)

Until 1/1/2025, employees covered under the law prohibiting mandatory overtime meet the following criteria:

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|--|
| 1. Employed in one of the protected profession job classes <u>AND</u>              |
| 2. Employed by a covered healthcare facility (listed above).                       |
| 3. Involved in direct patient care activities/clinical services.                   |
| 4. Covered by a collective bargaining agreement <u>OR</u> receives an hourly wage. |

Protected Profession Job Classes	
Registered Nurse	Diagnostic Radiologic Technologist
Licensed Practical Nurse	Cardiovascular Invasive Specialists
Nursing Assistant-Certified	Surgical Technologist
Respiratory Care Practitioner	

*These overtime protections criteria are in effect for covered hospitals listed in 70.41.420(7)(b)(iv) until 7/1/2025.*

### Mandatory Overtime: Employee Protections (begin 1/1/2025)

Reference: [HLS.A.1](#) (p. 2)

Beginning 1/1/2025 employees covered under the law prohibiting mandatory overtime meet the following criteria:

- Employed by a covered healthcare facility.
- Involved in direct patient care activities or clinical services.
- Covered by a collective bargaining agreement or receives an hourly wage.

### Hours Classified as "Overtime" for Covered Healthcare Employees

Example(s): [HLS.A.1](#) (p. 3-4)

Three types of overtime are prohibited for covered employees unless an exception applies. Overtime means:

- Hours worked more than an agreed upon, predetermined, regularly scheduled shift.
- Hours that exceed twelve hours worked in a twenty-four-hour period.
- Hours that exceed eighty hours worked in a consecutive fourteen-day period.

(RCW 49.28.130(4))

### Permissible Mandatory Overtime (Exceptions)

Reference: [HLS.A.1](#) (p. 4)

If an exception applies, a healthcare facility may require an employee to work overtime. These exceptions are:

- Overtime caused by an unforeseeable emergent circumstance.
- Overtime caused by prescheduled on-call time.
- The employer uses and documents *reasonable efforts* to obtain staffing but cannot avoid overtime.
- An employee is required to work overtime to complete a patient care procedure already in progress, where the employee's absence could have a harmful effect on the patient.

(RCW 49.28.140(3))

### Exception 1: Unforeseeable Emergent Circumstance

Example(s): [HLS.A.1](#) (p. 5)

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

The exception applies to circumstances that are unforeseeable and emergent. If a circumstance persists for a long period of time, it may no longer be considered within the scope of this exception.

(RCW 49.28.130(7))

### Exception 2: Prescheduled On-call Time

Example(s): [HLS.A.1](#) (p. 5-6)

Overtime may be lawfully required when the employee is prescheduled to be on-call. This includes, for example, regular scheduling practices or provisions of a collective bargaining agreement. Mandatory overtime may not be used:

- In place of scheduling employees to work regularly scheduled shifts when a staffing plan indicates the need for one.
- To address regular changes in patient census or acuity or expected increases in the number of employees not reporting for predetermined scheduled shifts.

- To begin at a time when the duration of a procedure is expected to exceed the employee's regular scheduled hours of work, except when the provider believes a delay would result in a worse clinical outcome. (RCW 49.28.140(3)(b)(i-iii))

*\*Generally, on-call employees may not be required to work overtime to fill known coverage gaps that the employer could or should have accounted for.*

### Exception 3: Reasonable Efforts

Example(s): [HLS.A.1](#) (p. 6-8)

The employer must **document** "reasonable efforts" to obtain staffing by completing each of the following four steps:

- Seek qualified staff who are willing to volunteer for extra work.
- Contact qualified staff who have made themselves available for extra work.
- Seek the use of qualified per diem staff.
- Seek personnel from a contracted temporary staffing agency, as permitted by law or a collective bargaining agreement, when the employer regularly uses a temporary agency. (RCW 49.28.130(6))

*The "reasonable efforts" exception may not be used to fill vacancies resulting from chronic staff shortages.*

### - Chronic Staff Shortage

Example(s): [HLS.A.1](#) (p. 8-9)

Although an employer may generally require overtime after meeting the *reasonable efforts* exception, mandatory overtime cannot be used to fill vacancies from chronic staffing shortages, regardless of whether the exception might apply. Multiple factors impact what determines staffing adequacy and this will vary among facilities. Chronic staffing shortages are those where vacancies are either **long-standing or frequently recurring**.

*A long-standing vacancy is generally considered one that has been open and/or under active recruitment for at least 90 days.*

### - Compliance with Reasonable Efforts Exception

Example(s): [HLS.A.1](#) (p. 9)

Staffing Scenarios <a href="#">HLS.A.1</a>	Can the facility use 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 leave of absence.	No
Frequently recurring increases in census such that the scheduled complement of nurses is inadequate.	No
Unanticipated increases in census above that anticipated by the health care facility resulting in additional staffing demands.	Yes
Unanticipated absences (such as unexpectedly high same day sick calls) that exceed the staffing plan tolerances.	Yes

### Exception 4: Procedure in Progress

Example(s): [HLS.A.1](#) (p. 9-10)

An employer may lawfully require an employee to work overtime to complete a procedure already in progress when the absence of the employee could have an adverse effect on the patient.

This could include:

- An emergency code in progress (trauma, cardiac arrest, stroke).
- A cardiovascular invasive specialist needs to complete documentation after an emergent situation.
- A nurse has skills needed for an ongoing procedure that no other relief nurse would have.
- A surgical technologist is the only person with knowledge of a piece of equipment or a procedure.
- A covered employee is completing outpatient surgical or specialty procedures located within a 24-hour hospital facility.
- In outpatient surgery operating with a single shift, a nurse may have to stay long enough for the patient to recover and be released. (RCW 49.28.140(3)(d))

*Exception determining factor: whether the absence of the specific, covered employee could have an adverse effect on the patient.*

### Filing a Labor and Industries Mandatory Overtime Complaint

- ONLINE: [File a Worker Rights Complaint online.](#)
- MAIL: Download and mail a completed [Worker Rights Complaint form](#) (F700-148-000)
- PHONE: By Phone 360-902-5484
- IN PERSON: Visit your nearest [L&I office.](#)

For **QUESTIONS** on mandatory overtime policy/law contact: [HealthcareLaborStandards@lni.wa.gov](mailto:HealthcareLaborStandards@lni.wa.gov)

### References

[Chapter 70.41 RCW](#) Hospital licensing and regulation.

Labor and Industries. (2024). Law restricting mandatory overtime for certain healthcare workers. Administrative policy.

Retrieved August 9, 2024 from [HLS.A.1\(wa.gov\)](#)

[RCW 49.28.130](#) Hours of health care facility employees – definitions. (Effective January 1, 2025).

[RCW 49.28.140](#) Hours of health care facility employees – mandatory overtime prohibited – exceptions.

[RCW 49.28.150](#) Hours of health care facility employees – penalties.