

SHB 1155: Breaks and Overtime Protections Bill Summary

Substitute House Bill 1155 passed the legislature on April 24, 2019. Most components of the bill go into effect on January 1, 2020 – the two exceptions are: 1) mandatory overtime protections for tech, which goes into effect on July 1, 2020; and 2) for nurses and techs working in critical access hospitals and sole community hospitals, the effective date for the entire bill is July 1, 2021.

The bill provides two key protections: uninterrupted meal and rest breaks and enhanced mandatory overtime protections. Please see below for the details related to each section.

1. Uninterrupted meal and rest breaks

- a. The rest and meal break standard currently applied by most employers is ‘intermittent.’ This often means that employees are told to count brief trips to the bathroom or filling a water bottle as adding up to the required “break” over the course of a shift or day. In practice, that standard meant that more often than not, many health care workers were not receiving lawful breaks because they remain responsible for patient care while doing such tasks and are not in fact relieved from work.

This bill prohibits ‘intermittent’ breaks and requires ‘uninterrupted’ breaks – meaning that, to be lawful, both rest breaks and meal breaks must now be given in complete and continuous fashion.

- b. Breaks must still follow the existing rules during work shifts, meaning nurses and techs will receive the same number of breaks based on hours worked. To assure that employers provide adequate staffing to relieve nurses of patient care responsibilities, breaks are to be scheduled at any time during the work period in which a break is required (i.e., a rest break no less frequently than every four hours). We expect management and nurses to work together to determine when breaks are scheduled, and to coordinate as needed if patient care needs would interfere with a scheduled break time (so that a nurse could say “I can’t go now,” and take the rest break at a later opportunity during the same four-hour or day-long shift period, depending on patient needs).
- c. Due to the nature of hospital care, there are some reasons rest and meal breaks can be legally interrupted:
 - i. Unforeseen emergency circumstances—such as declared emergencies or under activation of the hospital’s disaster plan.
 - ii. Clinical circumstances which may result in significant adverse effect on a patient’s condition. This includes times when a nurse or tech’s knowledge, specific skill, or ability is needed or when there is an unforeseen or unavoidable event relating to patient care delivery requiring immediate action that could not be planned for by an employer. **However, if a rest break is interrupted for a clinical circumstance before at least ten minutes have passed uninterrupted, then a replacement break must be provided.**

- iii. Hospitals must provide a way for nurses and techs to record missed rest breaks and meal periods and must keep those records.
- d. This law applies to registered nurses, license practical nurses, certified nursing assistants, surgical technologists, diagnostic radiologic technologists, cardiovascular invasive specialists, and respiratory care practitioners.

2. Mandatory overtime prohibitions

- a. Prior to this bill, mandatory overtime protections for registered nurses and licensed practical nurses existed in law in limited fashion; this bill enhances those protections. Previously, protections included the following:
 - i. No regular shift shall exceed 12 hours in a 24-hour period or 80 hours in a 14-day period.
 - ii. Employers could only exceed this on a mandatory overtime basis if they used “reasonable efforts” to obtain alternative staffing. This means taking at least the following four steps:
 - 1) asking for volunteers amongst qualified staff;
 - 2) seeking volunteers from a list of those who have made themselves available for overtime;
 - 3) use of per diems;
 - 4) use of travelers.
- b. The problem was that due to an overly broad loophole around ‘call,’ employers were not following this process, and were instead replacing mandatory overtime and the four-step process outlined above by relabeling everything ‘call.’ This led to an abuse of the otherwise appropriate use of call, essentially meaning that many nurses and techs were effectively subject to chronic mandatory overtime called by another name.

The new law keeps the existing protections and adds the following:

- i. Use of mandatory ‘prescheduled on-call’ now cannot be used to fill regular shifts identified in the staffing plan. These must be filled appropriately.
- ii. In order to protect against an employer artificially ‘lowballing’ the staffing plan to get around this, the bill adds a new protection: mandatory prescheduled on-call cannot be used to address regular changes in patient census or acuity, nor expected numbers of employees not showing up for regularly scheduled shifts – this means that if the work is regular, or if the sick/vacation/leave call out rates are regular, ‘call’ is not an appropriate tool.
- iii. In addition, an employee who accepts overtime and works more than 12 consecutive hours shall be given the option to receive 8 consecutive hours off before a next shift.

- iv. Finally, the law now applies not only to registered nurses and licensed practical nurses, but also to certified nursing assistants, surgical technologists, diagnostic radiologic technologists, cardiovascular invasive specialists, and respiratory care practitioners.

3. Effective dates:

- a. The entire underlying bill takes effect January 1, 2020.
- b. For tech job classes, inclusion under the mandatory overtime protections begins July 1, 2020.
- c. For all critical access hospitals, hospitals with fewer than 25 acute care beds, and sole community hospitals, the entire bill takes effect July 1, 2021.