

CONGRATULATIONS on your VICTORY at ST. JOE'S!

Washington State Nurses Association fought for your rights to lawful rest and meal breaks at St. Joseph Medical Center in Tacoma, and through a ground-breaking settlement **WE WON**:

- ~ \$5 million in back pay for nurses
- ~ Block rest breaks house-wide
- ~ Pay for all recorded missed block rest breaks as of June 1
- ~ 26 new FTEs of break relief nurses
- ~ Protection from retaliation

And more...

**PLEASE CAREFULLY READ THIS
IMPORTANT NOTICE ABOUT THE
SETTLEMENT**

NOTICE OF SETTLEMENT

Washington State Nurses Ass'n v. Franciscan Health System d/b/a St. Joseph Medical Center, Cause No. 15-2-08474-2 (Pierce County Superior Court)

Washington State Nurses Association (“WSNA”) filed a lawsuit under Washington state wage laws against Franciscan Health System d/b/a St. Joseph Medical Center (“SJMC”) in Pierce County Superior Court on behalf of nurses it represents working at SJMC. WSNA and SJMC settled all of these claims. The purpose of this notice is to provide you with additional information about the settlement of the case (the “Settlement”).

If you were employed as a Registered Nurse (“RN”) at SJMC at some time between May 12, 2012, and November 29, 2016 (the “Settlement Period”), you are likely entitled to receive damages for missed rest periods and meal periods as provided herein and, if you are currently employed as an RN at SJMC, you will receive the benefit of the going-forward provisions of the Settlement described herein.

WHAT IS THIS CASE ABOUT?

WSNA is the labor organization that represents RNs working at SJMC. WSNA brought this suit in its associational capacity for back pay and interest resulting from SJMC’s failure to provide RNs with the rest periods and meal periods required under state law. WSNA brought its claims under RCW 49.12 and WAC 296-126-092 and included claims for overtime under RCW 49.46 and double damages for willful violations under RCW 49.52. Approximately 2,070 WSNA-represented nurses were subject to statutory rest break and meal break violations during the Settlement Period.

WSNA’s claims in the lawsuit can be summarized as follows:

1. **RNs were required to work through rest breaks:** In most units, SJMC policy provides for so-called “intermittent breaks” of a few minutes here and there to use the restroom, get a quick drink or snack, or make a personal phone call, etc. WSNA alleged that so-called “intermittent breaks” at SJMC did not comply with state law, because RNs actively perform work throughout the entirety of their “intermittent” rest breaks. WSNA alleged that RNs are not completely relieved from nursing care obligations, and RNs remain legally and ethically responsible for their patients, unless and until they transfer nursing care to another qualified RN; and, RNs are not required to, and do not in fact, transfer nursing care to another RN when they take so-called “intermittent breaks” at SJMC. Block rest breaks are therefore required but were not provided during the Settlement Period for every four hours of work. WSNA alleged that SJMC is liable for all missed block breaks that have not already been compensated.
2. **RNs were required to work through meal periods.** State law entitles RNs to a 30-minute meal period for each five hours of work and provides time periods within which meal breaks must be provided. The law requires that RNs receive 30 minutes of uninterrupted time free from work to eat for each unpaid meal period. Even when meal periods are paid, RNs are entitled to a total of 30 minutes of time free from work to eat, even if that time is interrupted. WSNA alleged that RNs were denied statutorily-compliant meal periods

because a) RNs were required to perform unremitting work through their meal periods and b) RNs did not receive meal periods within the timeframes provided under state law.

SJMC denied all of these allegations. SJMC alleged that intermittent rest periods at SJMC were lawful, that block rest breaks were not required, and that RNs were not owed any back pay for missed rest breaks. SJMC alleged that it was the RNs' duty and responsibility to record all missed breaks and that all recorded missed breaks were paid, so no additional back pay was owed. As to the second meal period on 12-hour shifts, SJMC argued that it is not liable for back pay for those missed second meal periods because the collective bargaining agreement ("CBA") between SJMC and WSNA waived RNs' statutory right to a second meal period. SJMC argued that WSNA could not prove its case through representative testimony because each individual RN's situation was different.

WSNA argued that the CBA could not and did not waive the RNs' individual state law rights to meal periods. WSNA argued that the testimony of SJMC managers and individual RNs could establish liability for all affected nurses.

The Court did not rule on the merits of WSNA's claims or SJMC's defenses, and it did not decide whether WSNA or SJMC would win the case. SJMC and WSNA engaged in lengthy settlement negotiations and agreed on a settlement of the lawsuit that WSNA believes is fair, adequate and reasonable. The terms of the Settlement are summarized below.

WHAT ARE THE REASONS FOR THIS SETTLEMENT?

WSNA began this lawsuit on May 12, 2015. WSNA and SJMC exchanged information and documents concerning WSNA's claims and SJMC's defenses and have investigated the facts and law applicable to the case. As part of this investigation, the parties and their attorneys collected and analyzed payroll and timekeeping data relating to the RNs who worked at SJMC during the Settlement Period. Multiple witnesses for both sides testified in depositions.

WSNA and its attorneys agreed to the Settlement after considering and comparing the risks and benefits of continued litigation versus settlement of the case on the settlement terms. Among the factors considered were the likelihood that the Settlement will provide fair reimbursement for RNs for missed breaks; prospective changes ensuring lawful rest and meal breaks at SJMC going forward; the risks, difficulties, and uncertainties in proving liability and damages at trial, including SJMC's challenges to WSNA's ability to prove up its case; and the expense and delay inherent in continued litigation and appeals. WSNA and its attorneys balanced these risks in determining that the proposed Settlement is fair, adequate and reasonable. WSNA sought to ensure the most expedient resolution that would give nurses lasting and meaningful changes at the Hospital and staffing resources necessary to ensure that RNs working at SJMC would get their breaks, in addition to compensation for past violations.

DESCRIPTION OF THE PROPOSED SETTLEMENT

The following is a summary of the basic provisions of the Settlement.

- SJMC will create a Settlement Fund of \$5 million, which will be used to pay all individual settlement awards for RNs who worked at SJMC during the Settlement Period.

- The individual settlement amounts paid to each RN will be based on SJMC's payroll and timekeeping records, specifically, how many hours each RN actually worked on each day during the Settlement Period; the number of rest breaks and meal breaks each RN was eligible for on each shift (assuming one rest break for every four hours worked and one meal break for every more than five hours worked); which department(s) the RN worked in during the Settlement Period; the number of missed rest and meal breaks already recorded, and therefore already paid (recorded missed breaks were already compensated at 100%, so the Court would not have awarded an RN any additional damages at trial for those missed breaks); the RN's regular rate of pay; and whether the RN's hours worked including the missed rest and meal break time exceed 40 in a week. The individual settlement amounts paid to each RN will also be based on reasonable assumptions about the frequency of missed rest periods and meal periods in each department, and the timing of meal periods RNs received in each department, based on information gathered during WSNA's investigations of its claims and the sworn testimony provided by RNs during the case.

- **Stated another way, individual settlement awards will vary depending on:**

- **How many weeks you worked in the Settlement Period,**
- **How many hours you worked each day and week,**
- **Your regular rate of pay for each week in the Settlement Period,**
- **The department(s) you worked in, and**
- **How much of the missed break time would be at overtime rates of pay.**

- Settlement awards will be calculated and paid from the Settlement Fund on a pro rata (proportionate) basis for each RN based on these data, plus prejudgment interest.

- The individual settlement awards payable under the terms of the Settlement include both back pay and prejudgment interest components, calculated on an individual basis for each RN. The back pay portion of the settlement award will be reduced by the employee's share of applicable income and payroll taxes (and such sums will be reported on an IRS W-2 form). The portion allocated to prejudgment interest will not be reduced (and such sums will be reported on an IRS Form 1099). Settlement payments that have not been cashed within 120 days after they are issued will be divided equally between the Washington State Nurses Foundation and the Franciscan Foundation.

- SJMC has paid WSNA for attorneys' fees and costs it expended in bringing and fighting this important case. The payment of attorneys' fees and costs is in addition to the \$5 million Settlement Fund for back pay for nurses.

- SJMC agreed to make prospective (going forward) changes at the Hospital. Specifically, SJMC has agreed to implement a Block Break Relief System on all shifts in all units and departments in which nurses represented by WSNA work. The Block Break Relief System must include the following:

- **SJMC will provide block rest periods on all units and departments by April 1, 2018.** Block rest periods are rest periods consisting of at least 15 continuous minutes of rest period time during which a nurse has no work responsibilities. No work responsibilities means that the nurse has transferred all job responsibilities, including patient care of all of his or her patients, to another Registered Nurse. SJMC will ensure that nurses receive block rest periods at least 80% of the time.
- **Pay for missed Block Rest Periods.** SJMC will pay for 100% of recorded missed block rest periods in all units beginning June 1, 2017.
- **Break Relief Nurses.** SJMC will hire and maintain 26 new FTEs to work as break relief nurses, in addition to existing break relief nurses, which SJMC also must maintain. A break relief nurse is a Registered Nurse assigned to providing relief for rest periods and meal periods and who has no patient assignments other than to provide patient care for the patients of a nurse so that nurse can take a rest period or a meal period. Recruiting efforts for the new FTEs were to begin January 1, 2017. SJMC must operationalize the use of the break relief nurses by April 1, 2018.

Break relief nurses will work in the following units and departments: Inpatient and Outpatient Oncology, the Emergency Department (including Emergency Services and the Emergency Department Observation Unit/Med-Surg Observation Unit), Med/Surg (including Med-Surg 4th South/Orthopedics, Med-Surg 7th, Med-Surg 8BC-9th Floor), Critical Care (including 5th Floor Cardiac ICU, 6th Floor Neuro-Trauma ICU, and the Progressive Care Unit), Psychiatric Acute, NICU, Family Birthing Unit/ Family Birth Center, Inpatient Rehab, Ambulatory Care Center, and the Acute Renal Ancillary Unit/Acute Renal Dialysis Unit.

- **Choice About Second Meal Periods.** By April 1, 2017, SJMC will give nurses working 12.5 hour shifts the opportunity to choose to either individually waive their second meal period in writing or receive two thirty-minute unpaid meal periods in a 12.5 hour shift.
- **Education.** SJMC agreed to provide education to managers and nurses about rest and meal breaks and to work collaboratively with WSNA to prepare this training and facilitate its implementation.
- **Recording of Missed Breaks.** The Hospital agreed to make recording missed breaks easier by implementing electronic recording of missed breaks no later than October 2021.
- **No Retaliation.** Starting immediately, nurses must be free from retaliation or discipline for recording missed rest periods and missed meal periods. SJMC will promptly investigate any allegation of retaliation and take appropriate action.

- **Meet and Confer.** SJMC and WSNA will meet and confer on or around October 1, 2017, regarding whether other units or departments or shifts require the use of Break Relief Nurses. Notify your WSNA Representative, Sara Frey, at (206) 575-7979, ext. 3039 or sfrey@wsna.org if you feel you need break relief nurses on your unit or shift!

WHAT IS THE LEGAL EFFECT OF THE SETTLEMENT?

In exchange for SJMC's agreements described above, WSNA voluntarily dismissed the lawsuit "with prejudice." This means that any claims that were or could have been asserted by WSNA in the lawsuit have been permanently dismissed.

WHAT OPTIONS DO I HAVE WITH RESPECT TO THE SETTLEMENT?

1. Option to Receive The Benefits Of The Settlement:

If you are a current RN at SJMC, you do not need to do anything to receive the benefits of the going-forward changes at the Hospital.

To receive your individual settlement award, you must sign a release of claims against SJMC for missed rest and meal breaks during the time period between May 12, 2012, and November 29, 2016. When claims are "released," it means that a person covered by the release cannot later sue or recover from SJMC or the other released parties (SJMC's corporate parent, subsidiaries, employees, agents, attorneys and representatives) for any of the claims that are covered by the release.

You do not need to do anything to obtain the release or receive the individual settlement award. They will be sent to you. SJMC will issue settlement payments to Registered Nurses over the second calendar quarter of 2017 (between April and June 2017). You should make sure SJMC and WSNA have your current address on file.

2. Option to Decline To Sign The Release Of Claims:

You do not have to sign a release of claims; however, if you do not sign the release of claims against SJMC for missed rest and meal breaks during the time period between May 12, 2012, and November 29, 2016, you will not receive payment out of the Settlement Fund. When claims are "released," it means that a person covered by the release cannot later sue or recover from SJMC or the other released parties (SJMC's corporate parent, subsidiaries, employees, agents, attorneys and representatives) for any of the claims that are covered by the release.

If you do not sign a release of claims and you want to seek recovery from SJMC for missed rest and meal breaks instead of accepting payment from the Settlement Fund, you are not barred from bringing a separate lawsuit on those claims. However, there are time frames (called statutes of limitations) that apply and you would not be able to recover any money for violations that occurred before the beginning of the limitations period. For this reason, if you are potentially interested in bringing a separate lawsuit, we recommend that you promptly seek legal advice from your own lawyer.

3. Choice About the Second Meal Period on a 12-Hour Shift.

A 12.5-hour nurse who does not waive his or her right to a second meal break will get two unpaid 30-minute meal breaks per shift, one in the first half of the shift and one in the second half of the shift. Both 30-minute meal breaks must be work-free, continuous, and uninterrupted. The nurse's shift will remain 12.5 hours, but s/he will be paid for 11.5 hours of work. If either meal break is interrupted, shortened, or missed altogether, it should be recorded as missed and, if recorded, it will be paid as a missed meal break.

A 12.5-hour nurse who does waive his or her right to a second meal break will get one unpaid 30-minute meal break per shift, beginning no later than at the end of the 5th hour of work. This 30-minute meal break must be work-free, continuous, and uninterrupted. The nurse's shift will remain 12.5 hours, and s/he will still be paid for 12 hours of work. S/he will not be entitled to a second 30-minute meal break. S/he will work out the rest of the shift with only rest breaks. If the first meal break is interrupted, shortened, or missed altogether, it should be recorded as missed and, if recorded, it will be paid as a missed meal break.

QUESTIONS?

Congratulations on your victory! If you have any questions that have not been answered in this or prior mailings about the lawsuit settlement, please contact counsel for WSNA at WSNAsettlement@workerlaw.com.

Dated this 22nd day of February, 2017.

Christine Himmelsbach-Watts, MN, RN
Assistant Executive Director of Labor Relations

Washington State Nurses Association