

# BULLETIN

## New Law: Hospital Action Required

June 23, 2023

**To:** Chief Executive Officers, Chief Financial Officers, Chief Quality Officers, Chief Nursing Officers, Human Resources, Risk and Compliance, Legal Counsel, and Government Affairs Staff

**Staff Contact:** Ashlen Strong, JD, MPH, Senior Director, Government Affairs  
[ashlens@wsha.org](mailto:ashlens@wsha.org) | 206-216-2550

**Subject:** New Requirements for Hospital Staffing (2023 SB 5236)

### Purpose

The purpose of this bulletin is to inform hospitals of expansive changes to Washington hospital staffing laws pursuant to [Engrossed Second Substitute Senate Bill 5236 \(E2SSB 5236\)](#), the compromise bill negotiated and enacted into law during the 2023 legislative session. The enacted law is a result of significant negotiations and involvement in the legislative process.

This legislative compromise was enacted in lieu of mandatory, statewide nurse-to-patient ratio requirements. WSHA's goal, articulated by our members in negotiating the law, was to maintain access to hospital services across the state. We know from California's experience with statewide nurse-to-patient ratios that ratios do not increase the nursing workforce and would likely result in reduced access to hospital care. Hospitals must endeavor to comply with both the letter and spirit of these new requirements to demonstrate hospitals' continued commitment to providing supportive workplace conditions for hospital staff and that this approach is superior to statewide nurse-to-patient ratios.

### Applicability/Scope

New requirements under this law apply as follows for the following hospital settings:

New law requirements related to:	Applicability/Setting
Hospital staffing committees, hospital staffing plans, and compliance reporting related to hospital staffing plans	<ul style="list-style-type: none"><li>Acute care hospitals licensed under <a href="#">RCW 70.41</a></li><li>State hospitals as defined in <a href="#">RCW 72.23</a></li></ul>
Uninterrupted meal and rest breaks	<ul style="list-style-type: none"><li>Acute care hospitals licensed under <a href="#">RCW 70.41</a></li></ul>
Mandatory prescheduled on-call time that results in overtime	<ul style="list-style-type: none"><li>Acute care hospitals licensed under <a href="#">RCW 70.41</a></li><li>Psychiatric hospitals licensed under <a href="#">RCW 71.12</a></li></ul>



Washington State Hospital Association

999 Third Avenue, Suite 1400 Seattle, WA 98104 Phone 206-281-7211 [www.wsha.org](http://www.wsha.org)

## **Recommendations**

1. Review this bulletin, as well as [E2SSB 5236](#) and WSHA’s other compliance resources, to understand the new requirements. WSHA cannot offer legal advice to members and recommends hospitals engage legal, risk, compliance, and human resources leadership as appropriate to evaluate compliance with the new law.
2. Share this bulletin and other WSHA resources with appropriate hospital colleagues.
3. Participate in WSHA webinars, task forces, advisory groups, and other educational offerings about implementation of this legislation.
4. Monitor WSHA communications about the statewide Advisory Committee on Hospital Staffing and WSHA’s Hospital Staffing Law Implementation Task Force. The Advisory Committee will play a key role in the implementation of the new law, including development of forms necessary to comply with the law.
5. Continue to engage in CARE Initiative activities, such as regular CEO listening sessions and take action on concerns raised by staff. Communicate the actions your hospital takes.

## **Executive Summary of Select Law Changes**

The following is an executive summary of the most significant changes in [E2SSB 5236](#). Please see Detailed Section-by-Section Summary of Law Changes (page 6) for a more complete and detailed description of the new requirements in each section of the law and Implementation Timeline of New Requirements (page 18) for a timeline of effective dates in the law.

### **Foundation of the law**

[E2SSB 5236](#) builds on Washington’s nurse staffing committee law passed in 2008 and updated in 2017. The new law changes the names of “nurse staffing committees” to “hospital staffing committees” and “nurse staffing plans” to “hospital staffing plans” (Section 2). It also amends existing laws related to uninterrupted meal and rest breaks for acute care hospital employees (2019) and a prohibition on mandatory overtime for health care facility employees (2002).

### **Statewide Advisory Committee on Hospital Staffing (Section 1)**

This section creates a statewide Advisory Committee on Hospital Staffing to be established by the Department of Health (DOH) in consultation with the Department of Labor and Industries (L&I). This committee will consist of six hospital representatives nominated by WSHA and six labor representatives nominated by unions. The Advisory Committee will be constituted in September 2023 and will continue through July 1, 2030. This committee is tasked with advising the State on important compliance oversight tools, such as the form that hospitals must use to develop hospital staffing plans and compliance reporting forms for uninterrupted meal and rest breaks and hospital staffing plans.

WSHA’s Executive Committee of the Board will select WSHA’s slate of representatives to the Advisory Committee in July 2023. WSHA sought nominations from hospital CEOs through a formal nomination process in May – June 2023.

### **Changes to hospital staffing committees (Section 3)**

The following changes are coming to all staffing committees beginning January 1, 2024:

- Adds LPNs and CNAs to hospital staffing committees and hospital staffing plans;

- Requires use of a uniform form for development of the hospital staffing plan;
- Requires development of a charter with eleven specific elements (outlined in the detailed section below);
- Requires voting committee members to be exactly 50% management and 50% labor, with CNOs, CFOs, and nurse managers or each of their designees to be included in the management contingent; and
- Selection of labor hospital staffing committee members will be according to the collective bargaining *representative* (union), rather than the collective bargaining *agreement* as under current law. The law is silent as to how the unions will appoint members in the case of multiple unions representing RNs, LPNs, and CNAs in the hospital. Non-union staff must self-select their labor representatives.

### **Changes to the process for adopting hospital staffing plans (Section 3)**

The hospital staffing committee must vote to approve a proposed staffing plan to present to the hospital/CEO. If the hospital/CEO rejects or requests changes to the proposed plan, the committee must have the opportunity to resubmit a revised plan. If the hospital/CEO still rejects the plan, it reverts to either:

- The most recently adopted hospital staffing plan that was approved by the committee; or
- The 2023 staffing plan.

WSHA recommends that hospital CEOs attend hospital staffing committee meetings when appropriate. Since hospital management will constitute 50% of the committee membership, and representatives of the CNO and CFO must be involved in the committee that is developing and approving the proposed staffing plan, it should be rare when a CEO rejects or requests changes to a proposed staffing plan.

### **New hospital staffing plan compliance reporting (Section 3)**

Under current law, hospitals are required to assign nursing staff (CNAs, LPNs, RNs) to each patient care unit in accordance with the adopted staffing plan. This requirement is not changing, except the new law adds an explicit exception for unforeseeable emergent circumstances.

The major change in this section is that beginning July 1, 2025, hospitals must *monitor and document* their rate of compliance with the existing requirement to assign nursing staff to each patient care unit in accordance with the adopted staffing plan. Hospitals must adopt written policies and procedures on how they will document compliance by October 1, 2024.

Each hospital must document when nursing staff assignment in a patient care unit is out of compliance with the adopted staffing plan for that unit. Out of compliance means the number of patients assigned to the nursing staff exceeds the patient care unit assignment as directed by the hospital staffing plan.

If a hospital is in compliance for less than 80% of the nurse staffing assignments in a month, the hospital must report to DOH within seven calendar days following the end of the month in which the hospital was out of compliance.

The precise definition and calculation of “80% of the nurse staffing assignments in a month” is not outlined in the law. WSHA anticipates the Advisory Committee on Hospital Staffing will have input on the way this requirement is implemented.

Hospitals must report their compliance rate to DOH every six months beginning January 31, 2026. The first report will cover July – December 2025.

***Rural hospital exemption:*** New hospital staffing plan *compliance reporting requirements* do not apply to acute care hospitals that are:

- Certified as critical access hospitals;
- Have fewer than 25 acute care licensed beds;
- Certified as sole community hospitals and are not owned by a system that owns more than one acute care hospital; or
- Island Hospital (previously certified as a Medicare dependent hospital).

### **Changes to process for complaints about staffing plan variations (Section 3)**

In addition to the new hospital staffing plan compliance reporting outlined above, [E2SSB 5236](#) continues the existing policy of nursing staff being able to report instances of variations from the hospital staffing plan to hospital staffing committees.

Under current law, DOH cannot investigate these complaints under certain conditions, such as unforeseeable emergent circumstances. The new law changes this process so that DOH must investigate all complaints that have gone unresolved by the hospital staffing committee for more than 60 days, but hospitals cannot be found in violation if the investigation shows:

- There were unforeseeable emergent circumstances;
- An individual admission of a patient in need of life-saving care transferred from another hospital was the reason for the violation; or
- The hospital made reasonable efforts to retain or obtain staff.

### **New enforcement of hospital staffing plan compliance (Section 4)**

DOH, in consultation with L&I, must require hospitals to develop and submit for agency approval a corrective action plan within 45 days following either:

- Submission of a report indicating the hospital complied with patient care unit staffing assignments in the hospital staffing plan for less than 80% of a month (some rural hospitals exempt as noted above); or
- A finding of a violation following an investigation of multiple related complaints related to staffing plan variations or shift-to-shift adjustments that have been unresolved by the staffing committee for more than 60 days (applies to all acute care hospitals).

If a hospital fails to submit or follow a required corrective action plan, L&I may impose a penalty of \$50,000 per 30 days until the hospital begins to follow the corrective action plan.

If the hospital follows the corrective action plan but still does not resolve the violation, then the agencies will require the hospital to develop a more stringent corrective action plan.

### **Changes to uninterrupted meal/rest breaks requirements (Section 8)**

Section 8 expands application of the uninterrupted meal/rest breaks law to all acute care hospital employees who are involved in direct patient care activities or clinical services and receive an hourly wage or are covered by a collective bargaining agreement.

It also changes the definition of the “clinical circumstances” exemption from this law, so the determination of whether taking the uninterrupted break may lead to a significant adverse effect on the patient’s condition is made by the employee, unless the employer determines the patient may suffer life-threatening adverse effects.

It also allows employees to agree with employers to bundle meal periods and rest periods to take a longer break. If the employee is required to stay on duty during the bundled break, the entire break will be paid. If the employee is released from duty, the portion corresponding to the meal break will be unpaid and the portion corresponding to the rest break will be paid.

### **New compliance reporting related to uninterrupted meal/rest breaks (Section 8)**

Beginning in October 2024, most acute care hospitals are required to provide a quarterly report to L&I of the total meal and rest periods missed in violation of this law and the total number of meal and rest breaks required during the previous quarter. Reports are due to L&I 30 calendar days after the conclusion of the calendar quarter (the first report will cover July – September 2024 and are due October 30).

***Rural hospital delay:*** Reports for the following hospitals are not required until July 2026:

- Certified as critical access hospitals;
- Have fewer than 25 acute care licensed beds;
- Certified as sole community hospitals and are not owned by a system that owns more than one acute care hospital; or
- Island Hospital (previously certified as a Medicare dependent hospital).

### **New enforcement of compliance with uninterrupted meal/rest breaks (Section 9)**

If a hospital reports less than 80% compliance with uninterrupted meal/rest breaks in a quarter or fails to report, L&I will first provide technical assistance to the hospital. If after two years of technical assistance the hospitals are still reporting less than 80% compliance, L&I will begin to impose penalties. Beginning July 2026, impose penalties as follows:

- CAH or up to 25 licensed beds: Up to \$5,000 per quarter of non-compliance
- 26-99 licensed beds: \$10,000 per quarter of non-compliance
- 100-299 licensed beds: \$15,000 per quarter of non-compliance
- 300+ licensed beds: \$20,000 per quarter of non-compliance

These penalties are delayed by two years for hospitals subject to the rural delay. L&I can also impose penalties for retaliation and reporting invalid data (detailed in the Section-by-Section Summary of Law Changes).

**Change to mandatory on-call section of the mandatory overtime prohibition law (Section 10)**  
[E2SSB 5236](#) retains current law prohibiting use of mandatory overtime under [RCW 49.28.140](#), except for one change to use of mandatory prescheduled on-call as an exemption to the prohibition on use of mandatory overtime.

The change is: Mandatory prescheduled on-call time *may not* be used for nonemergent procedures scheduled to begin at a time when the duration of the procedure is expected to exceed the employee's regular scheduled hours of work. The exception is when a delay would cause a worse clinical outcome in the judgment of the provider responsible for the nonemergent patient procedure.

**New enforcement of the mandatory overtime prohibition law (Sections 11-13)**

Current law does not provide an administrative remedy for violation of the prohibition on mandatory overtime for health care facilities. [E2SSB 5236](#) creates an administrative remedy that closely follows the process used under the Wage Payment Act. The main difference is that the civil penalties follow the same amounts as under current law:

- \$1,000 per violation up to three violations;
- \$2,500 for the fourth violation; and
- \$5,000 per violation for the fifth and subsequent violations.

**Detailed Section-by-Section Summary of Law Changes**

The following details each section of the bill in order. The sections are labeled based on the content of that section. The section summaries focus on new law, though current law is noted where it was important to include for context.

**Section 1: Statewide Advisory Committee on Hospital Staffing (New section of [RCW 43.70](#))**

- Department of Health (DOH), in consultation with Labor and Industries (L&I) must establish an Advisory Committee on Hospital Staffing by September 1, 2023.
- Membership will include 6 hospital representatives nominated by WSHA and 6 labor representatives nominated by unions.
- The advisory committee must:
  - Advise DOH on development of a uniform hospital staffing plan form. The committee will meet at least monthly until the form is developed;
  - Advise L&I on development of a uniform reporting form for meal/rest break compliance;
  - Consider innovative hospital staffing and care delivery models, including data provided by WSHA;
  - Review the Washington State Institute for Public Policy (WSIPP) report on ratios, developed under section 15; and
  - Discuss ending the staffing plan patient assignment compliance carve out for rural and non-system sole community hospitals (SCHs).

- L&I and DOH must provide the advisory committee with data about compliance with staffing related laws and information necessary to provide technical assistance.
- The advisory committee expires on July 1, 2030.

**Section 2: Staffing committee and staffing plan definitions ([RCW 70.41.410](#))**

- These definitions apply to [RCW 70.41.420](#) (Section 3) and [RCW 70.41.425](#) (Section 4).
- Changes “nurse staffing committee” to “hospital staffing committee” (further defined in Section 3).
- Adds definition of CNA and registered nurse to the list of definitions.
- Changes “nursing personnel” to “nursing staff” and adds CNAs to the definition of “nursing staff.”
- Adds definition of “patient care staff,” which includes a person providing direct care or supportive services to patients, other than nursing staff, physicians, or ARNPs.
- Moves the concept of “reasonable efforts” previously located under [RCW 70.41.425](#) to the definitions section under [RCW 70.41.410](#) and defines it based on the existing definition of “reasonable efforts” under [RCW 49.28.130 Hours of health care facility employees – Definitions.](#)
  - "Reasonable efforts" means that the employer exhausts *and documents* all of the following but is unable to obtain staffing coverage:
    - (a) Seeks individuals to consent to work additional time from all available qualified staff who are working;
    - (b) Contacts qualified employees who have made themselves available to work additional time;
    - (c) Seeks the use of per diem staff; and
    - (d) When practical, seeks personnel from a contracted temporary agency when such staffing is permitted by law or an applicable collective bargaining agreement, and when the employer regularly uses a contracted temporary agency.
- Moves definition of “unforeseeable emergent circumstance” previously located under [RCW 70.41.420](#) to the definitions section under [RCW 70.41.410](#).
  - "Unforeseeable emergent circumstance" means:
    - (a) Any unforeseen declared national, state, or municipal emergency;
    - (b) When a hospital disaster plan is activated;
    - (c) Any unforeseen disaster or other catastrophic event that substantially affects or increases the need for health care services; or
    - (d) When a hospital is diverting patients to another hospital or hospitals for treatment.

### **Section 3: Changes to the staffing committee and staffing plan law ([RCW 70.41.420](#))**

#### **Composition of the Hospital Staffing Committee (Subsections 1-3)**

- 50% of the voting members of the committee will be comprised of nursing staff (RN, LPN, CNAs, nurse techs) who are non-supervisory and non-managerial. They will be selected by their union representatives or their peers if not unionized.
- 50% of the voting members of the committee will be determined by the hospital administration and must include the CFO, CNO, and unit directors or managers or their designees.
- Additional staffing relief must be provided if necessary to ensure committee members are able to attend the meetings.

#### **Development of the Staffing Plan (Subsections 4-5)**

- The hospital staffing committee must develop the annual patient care unit and shift-based hospital staffing plan, based on the needs of patients, to be used as the primary component of the staffing budget. (Current law)
- The hospital staffing committee must use a uniform form for developing the staffing plan, which will be developed by DOH in consultation with the Advisory Committee on Hospital Staffing. The staffing plan form will be important because it will be a major part of the way compliance with the requirement to staff each unit according to the plan is defined.
- In development of the staffing plan, the staffing committee must consider patient acuity level, level of experience and training of both nursing and patient care staff, the availability of other patient care staff, and compliance with collective bargaining agreements (CBAs) and relevant laws, such as meal/rest breaks and mandatory overtime.

#### **Approval of the Staffing Plan (Subsection 6)**

- The staffing committee must produce the annual staffing plan to be submitted to DOH by January 1 of each year (current law). The first hospital staffing plan developed under the new law and its required processes is due January 1, 2025.
- The committee must propose a draft annual staffing plan by a majority vote (50%+1).
- The draft annual staffing plan must be delivered to the hospital chief executive officer (CEO) for consideration by July 1 of each year (starting in 2024). The law is silent on when the hospital staffing committee should begin to develop the draft annual staffing plan, but WSHA recommends beginning the process several months prior to July.
- The CEO or their designee must provide written feedback to the committee that:
  - Identifies elements of the draft staffing plan to which the CEO requests changes and the rationale for the requested changes; and
  - Provides a status report on implementation of the current staffing plan, including nursing sensitive quality indicators, patient surveys, and recruitment and retention efforts.



- If the CEO requests changes, the committee must review the CEO’s feedback prior to approving by a majority vote a revised hospital staffing plan to provide to the CEO.
- If the hospital (CEO) does not adopt the revised staffing plan, the most recent of the following staffing plans remains in effect:
  - (i) The staffing plan that was in effect January 1, 2023; or
  - (ii) The staffing plan last approved by a majority vote of a hospital staffing committee and adopted by the hospital.

**Assignment of nursing staff to each patient care unit in accordance with the staffing plan (Subsection 7(a)-(e))**

- Beginning July 1, 2025, each hospital shall implement the staffing plan and assign nursing staff (CNAs, LPNs, RNs) to each patient care unit in accordance with the plan except in instances of unforeseeable emergent circumstances. (Current law, except the unforeseeable emergent circumstances exception is new here)
- **New Compliance Reporting:** Each hospital must document when a patient care unit nursing staff assignment is out of compliance with the adopted staffing plan. Out of compliance means the number of patients assigned to the nursing staff exceeds the patient care unit assignment as directed by the nurse staffing plan.
  - *WSHA recommends beginning to document compliance January 1, 2025, after the first hospital staffing plan is due to DOH.* The hospital must adopt written policies and procedures on how it will document compliance by October 1, 2024.
  - Beginning July 1, 2025, if a hospital is in compliance for less than 80% of the nurse staffing assignments in a month, within seven calendar days following the end of the month in which the hospital was out of compliance, the hospital must report to DOH.
  - On a semiannual basis, each hospital must report to the DOH the percentage of nurse staffing assignments where the assignment in a patient care unit is out of compliance with the adopted nurse staffing plan. Reports are due January 31 and July 31 of each year, starting January 31, 2026. January reports cover the previous July – December and July reports cover January – June.
  - DOH must develop a form for the report by October 1, 2024. The form must include a checkbox for either co-chair of the hospital staffing committee to indicate their belief that the validity of the report should be investigated by DOH.
- New compliance reporting for 80% compliance of staffing plans does not apply to:
  - Certified as critical access hospitals;
  - Have fewer than 25 acute care licensed beds;
  - Certified as sole community hospitals and are not owned by a system that owns more than one acute care hospital; or
  - Island Hospital (previously certified as a Medicare dependent hospital).

- **Complaints about staffing plan assignments:** Nursing staff may report complaints to the hospital staffing committee about variations from the nursing staff assignments in the staffing plan or shift-to-shift adjustments, and hospital staffing committees must develop a process to review these complaints (current law). All written complaints must be reviewed by the staffing committee. This provision applies to all acute care hospitals.
- See *Section 4: Enforcement of staffing committee, staffing plan, and staffing assignments* (page 11) to learn about new enforcement mechanisms for violations identified through both the compliance reporting and complaint processes described above.

#### **Contingency staffing plan in an emergency (Subsection 7(f))**

- In the event of an unforeseeable emergent circumstance lasting for 15 days or more, hospital incident command must report to the cochairs of the staffing committee an assessment of the staffing needs arising from the unforeseeable emergent circumstance and the hospital's plan to address the needs within 30 days and the committee will convene to develop a contingency staffing plan.
- Within 90 days of an initial deviation from the plan, the hospital must report the basis for the deviation to DOH and must report again when the hospital has returned to its normal staffing plan.

#### **Assignment to new unit or clinical area (Subsection 7(g))**

- RNs and CNAs may not be assigned by hospitals to a nursing unit or clinical area unless that nurse has first received orientation and demonstrated competence in that clinical area.
- Hospitals must adopt written policies and procedures under this subsection no later than July 1, 2025.

#### **Other changes to current law (Subsections 8-10)**

- Requires hospitals to post in a public area in each patient care unit any corrective action plan relevant to staffing plan compliance.
- Prohibits hospitals from taking any adverse action against an employee for performing duties connected with the staffing committee or reporting staffing concerns.
- Adds video conferencing to hospital staffing committee meeting options for critical access hospitals.

#### **Process for filing a staffing committee charter with DOH (Subsections 11 and 12)**

- By July 1, 2024 the hospital staffing committee must file a charter with DOH with information that includes:
  - The process for electing cochairs and their term limits;
  - The roles, responsibilities, and processes by which the hospital staffing committee functions;
  - Schedule for monthly meetings with more frequent meetings as needed that ensures committee members have 30 days' notice of meetings;

- Processes by which all staffing complaints will be reviewed, investigated, and resolved, noting the date received as well as initial, contingent, and final disposition of complaints and corrective action plan as needed;
- Processes by which complaints will be resolved within 90 days of receipt, or longer with majority approval;

*Note: There is a timing discrepancy in the law here. Section 4(1)(a)(iv)(B) regarding investigations of staffing related complaints states: "The departments may only investigate a complaint under this subsection ... that were submitted to the hospital staffing committee and remain unresolved for 60 days after receipt by the hospital staffing committee, excluding complaints determined by the hospital staffing committee to be resolved or dismissed." Until this discrepancy is resolved, WSHA recommends developing processes by which complaints will be resolved within 60 days of receipt.*

- Processes for attendance by any employee, and a labor representative if requested by the employee, who is involved in a complaint;
  - Processes for the committee to conduct quarterly reviews of: Staff turnover rates including new hire turnover rates during first year of employment; anonymized aggregate exit interview data on an annual basis; and hospital plans regarding workforce development;
  - Standards for hospital staffing committee approval of meeting documentation including meeting minutes, attendance, and actions taken;
  - Policies for retention of meeting documentation for a minimum of three years and consistent with each hospital's document retention policies;
  - Processes for the hospital to provide the hospital staffing committee with information regarding patient complaints involving staffing made to the hospital through the patient grievance process; and
  - Processes for how the information from the reports required under subsection (7) of this section will be used to inform the development and semiannual review of the staffing plan.
- DOH and L&I must provide technical assistance to hospital staffing committees to ensure compliance.

**Section 4: Enforcement of staffing committee, staffing plan, and staffing assignments ([RCW 70.41.425](#))**

**Staffing plan *complaint* investigations (Subsection 1)**

- Requires DOH to investigate *complaints* regarding failure to:
  - Form a hospital staffing committee;
  - Conduct a semiannual review of a hospital staffing plan;
  - Submit an annual hospital staffing plan or any revisions; or

- Follow the nursing staff assignments in a patient care unit, in violation of [RCW 70.41.420](#).
- Requires DOH, in consultation with L&I, to investigate *complaints* regarding staffing plan variations or shift-to-shift adjustments. DOH and L&I may only investigate complaints that remain unresolved for 60 days after receipt by the staffing committee.

*Note: There is a timing discrepancy in the law here. Section 3(11) on development of a staffing committee charter indicates the charter must include: "Processes by which complaints will be resolved within 90 days of receipt, or longer with majority approval." Until this discrepancy is resolved, WSHA recommends developing processes by which complaints will be resolved within 60 days of receipt.*

- In order to be found in violation of staffing plan variations or shift-to-shift adjustments based on nursing staff complaints, DOH and L&I must have determined there were multiple unresolved violations of a similar nature within 30 days prior to DOH receiving the complaint.
- If DOH and L&I find the hospital in violation of staffing plan variations or shift-to-shift adjustments based on this pattern of complaints, then DOH will require the hospital to develop and submit a corrective action plan within 45 days of DOH presenting the hospital with its finding of a violation.
- Following an investigation, hospitals *will not* be found in violation of [RCW 70.41.420](#) if:
  - There were unforeseeable emergent circumstances;
  - The hospital consulted the staffing committee and documents that it made reasonable efforts to obtain and retain staff but was unable to do so; or
  - Per documentation provided by the hospital, an individual admission of a patient in need of life-saving care received from another hospital caused the staffing plan violation alleged in the complaint.
- Either department (DOH or L&I) shall be permitted to investigate and take enforcement action if they learn of violations in the midst of another investigation.

#### **DOH review of staffing plans (Subsection 2)**

- DOH must review each hospital staffing plan to ensure it is received on time and on the DOH form.
- If a hospital does not complete all applicable portions of the form, DOH may determine it was not submitted in a timely manner.

#### **DOH review of semiannual staffing plan compliance forms (Subsection 3)**

- Beginning January 1, 2027, DOH must review all semiannual staffing plan compliance forms to ensure they are:
  - Received on time;
  - Completed on the DOH form; and

- The checkbox indicating the report may be inaccurate has not been checked.

#### **Staffing related corrective action plans (Subsections 4-5)**

- DOH, in consultation with L&I, must require hospitals to develop and submit for agency approval a corrective action plan within 45 days following either:
  - Submission of a report indicating the hospital complied with patient care unit staffing assignments in the hospital staffing plan for less than 80% of a month; or
  - A finding of a violation following an investigation of multiple related complaints related to staffing plan variations or shift-to-shift adjustments that have been unresolved by the staffing committee for more than 60 days.
- DOH and L&I must review and approve a hospital's proposed corrective action plan. If necessary, DOH will require the hospital to revise its corrective action plan to adequately address issues identified by DOH or L&I.
- A hospital's corrective action plan may include, but is not limited to, the following elements:
  - Exercising efforts to obtain additional staff;
  - Implementing actions to improve staffing plan variation or shift-to-shift adjustment planning;
  - Delaying the addition of new services or procedure areas;
  - Requiring minimum staffing standards;
  - Reducing hospital beds or services; or
  - Closing the hospital emergency department to ambulance transport, except for patients in need of critical care to sustain their life or prevent disability.
- The corrective action plan must be long enough in duration to demonstrate the hospital's ability to sustain compliance.
- If the hospital follows its corrective action plan but remains compliant with its staffing plan for less than 80% of subsequent months, the hospital will be required to submit another corrective action plan.

#### **Civil penalties and fines related to staffing committees and staffing plans (Subsection 6)**

- If a hospital fails to submit a staffing plan, staffing committee charter, or a corrective action plan by the relevant deadline, DOH may take administrative action with penalties up to \$10,000 per 30 days of failure to submit the document.
- If a hospital submits but fails to follow a corrective action plan, L&I may impose a civil penalty of \$50,000 per 30 days until the hospital begins to follow its corrective action plan.
- The hospital may appeal L&I's findings or imposition of civil penalties following the process outlined in Sections 12-14 of this act, which is similar to the Wage Payment Act appeals process under [RCW 49.48.084](#).

### **Public disclosure of staffing information (Subsection 7)**

- As resources allow, DOH must make records of any civil penalties, administrative actions, license suspensions or revocations, or any notices of resolution related to staffing available to the public.
- DOH must post hospital staffing plans, hospital staffing committee charters, and the semi-annual staffing plan compliance reports on its website.

### **Sections 5-6: DOH and L&I MOU around hospital staffing plan compliance (New sections under [RCW 70.41](#) and [RCW 49.12](#), respectively)**

- Both agencies must jointly establish a formal agreement (memorandum of understanding or MOU) that identifies the roles of each of the two agencies with respect to oversight and enforcement of:
  - Staffing plan development, patient care unit nursing staff assignments, and retaliation; and
  - Investigation of staffing complaints, review and approval of staffing related corrective action plans, and penalties related to staffing plan compliance.
- The MOU must, to the extent feasible, provide for oversight and enforcement by a single agency and include measures to avoid multiple citations for the same violation.
- The MOU must allow for data sharing related to hospital staffing plans, compliance reports, and hospital staffing committee complaints submitted to DOH.

### **Section 7: Applicability of acute care hospital administrative actions ([RCW 70.41.130](#))**

- Allows DOH to apply acute care hospital administrative actions to violations arising from L&I findings related to failure to comply with a corrective action plan.

### **Section 8: Meal and rest breaks ([RCW 49.12.480](#))**

- Expands application of this law to all acute care hospital employees who are involved in direct patient care activities or clinical services and receive an hourly wage or are covered by a collective bargaining agreement.
- Changes the definition of the “clinical circumstances” exemption from the uninterrupted meal and rest breaks law, such that the determination of whether taking the uninterrupted break may lead to a significant adverse effect on the patient’s condition is made by the employee, unless the employer determines the patient may suffer life-threatening adverse effects.

The “clinical circumstances” exemption now reads:

“Employers must provide employees with uninterrupted meal and rest breaks. This subsection (1)(b) does not apply in the case of: ...

(ii) An unforeseeable clinical circumstance, as determined by the employee, that may lead to a significant adverse effect on the patient's condition, unless the employer or employer's designee determines that the patient may suffer life-threatening adverse effects”

- Allows employees to agree with employers to bundle meal periods and rest periods to take a longer break. If the employee is required to stay on duty during the bundled break, the entire break will be paid. If the employee is released from duty, the portion corresponding to the meal break will be unpaid and the portion corresponding to the rest break will be paid.
- **New reporting required:** Beginning October 1, 2024, hospitals are required to provide a quarterly report to L&I of the total meal and rest periods missed in violation of this law and the total number of meal and rest breaks required during the quarter. Reports are due to L&I 30 calendar days after the conclusion of the calendar quarter. The first report will be due October 30, 2024 and will cover July – September 2024.
  - **Rural delay:** Reports for critical access hospitals (CAHs), hospitals with fewer than 25 beds, sole community hospitals (SCHs) that are not part of a system (currently Harbor Regional Health, Samaritan Hospital, Confluence Health, Olympic Medical Center), or Island Hospital are delayed until July 1, 2026.

## **Section 9: Meal and rest break enforcement (New section under [RCW 49.12](#))**

### **Enforcement of compliance reporting (Subsections 1-2)**

- Requires L&I to enforce the meal and rest breaks law, including review of the meal/rest break compliance reports to ensure they are timely, complete, and on the L&I issued form.
- If after review of the meal/rest break compliance report, L&I determines a hospital is not 80% compliant and more than 20% of required meal/rest breaks were missed, or the hospital fails to submit the report, L&I must offer technical assistance through June 30, 2026.
- Beginning July 1, 2026, L&I may still offer technical assistance but must impose a quarterly penalty of:
  - For hospitals certified as critical access hospitals, or with up to 25 licensed beds: \$5,000;
  - For hospitals with 26 to 99 licensed beds: \$10,000;
  - For hospitals with 100 to 299 beds: \$15,000; and
  - For hospitals with 300 or more beds: \$20,000.
- If L&I imposes a penalty in a third consecutive quarter, L&I must double the penalty amounts for subsequent consecutive quarters. A hospital that comes back into compliance for a single quarter is no longer subject to the doubled penalties.
- For critical access hospitals (CAHs), hospitals with fewer than 25 beds, sole community hospitals (SCHs) that are not part of a system, (currently Harbor Regional Health, Samaritan Hospital, Confluence Health, Olympic Medical Center), or Island Hospital, penalties are delayed until July 1, 2028.

### **Prohibition of retaliation (Subsection 3)**

- Prohibits hospitals from taking or threatening adverse action against employees (retaliation) for exercising meal/rest break rights.

- Requires L&I to investigate complaints related to adverse actions against employees.
- If L&I finds a violation, the department may:
  - Impose civil penalties of no more than \$1,000 for the hospital's first violation and no more than \$5,000 for any subsequent related violation;
  - Order appropriate relief to the employee, including any lost earnings due to the adverse action of the employer, plus interest of 1% per month; and/or
  - Order the hospital to restore the employee to the position held at the time of the adverse action or a similar position.

**Prohibition of inappropriate manipulation or modification of data (Subsection 4)**

- Requires hospitals to provide valid data in compliance reports that have been attested to by the hospital and have not been inappropriately manipulated or modified.
- Employees must be free from coercion into inaccurate reporting of their meal and rest periods.
  - Coercion is defined as “compelling or inducing an employee to engage in conduct which the employee has a legal right to abstain from or to abstain from the conduct which the employee has a legal right to engage in.” (Subsection 7)
- Requires L&I to investigate complaints related to invalid data/inappropriate manipulation or modification of data.
- If L&I finds a violation, the department may:
  - Impose civil penalties of no more than \$1,000 for the hospital's first violation and no more than \$5,000 for any subsequent related violation;
  - Order appropriate relief to the employee, including any lost earnings due to the adverse action of the employer, plus interest of 1% per month; and/or
  - Order the hospital to restore the employee to the position held at the time of the adverse action or a similar position.

**L&I investigation and enforcement (Subsection 5)**

- Permits L&I to investigate and take enforcement action without a complaint if it finds data in the course of another investigation.

**Appeal of L&I's actions under this section (Subsection 6)**

- Permits hospitals to appeal any of L&I's actions under this section pursuant to sections 12-14 of this Act.

**Section 10: Prohibition on mandatory overtime ([RCW 49.28.140](#))**

- Retains current law prohibiting use of mandatory overtime, except for one change to use of mandatory prescheduled on-call as an exemption to the prohibition on use of mandatory overtime.



- The change is: Mandatory prescheduled on-call time *may not* be used for nonemergent procedures scheduled to begin at a time when the duration of the procedure is expected to exceed the employee's regular scheduled hours of work.
  - Exception: When, in the judgment of the provider responsible for the nonemergent patient procedure, a delay would cause a worse clinical outcome.

**Section 11: Mandatory overtime enforcement ([RCW 49.28.150](#))**

- Removes the existing enforcement procedures for [RCW 49.28.150](#) and replaces them with the new enforcement procedures outlines in Sections 12-14 of this act.
- This new enforcement procedure is very similar to that of the Wage Payment Act under [RCW 49.48.083](#).

**Section 12: Mandatory overtime enforcement (New chapter in [RCW 49.12](#))**

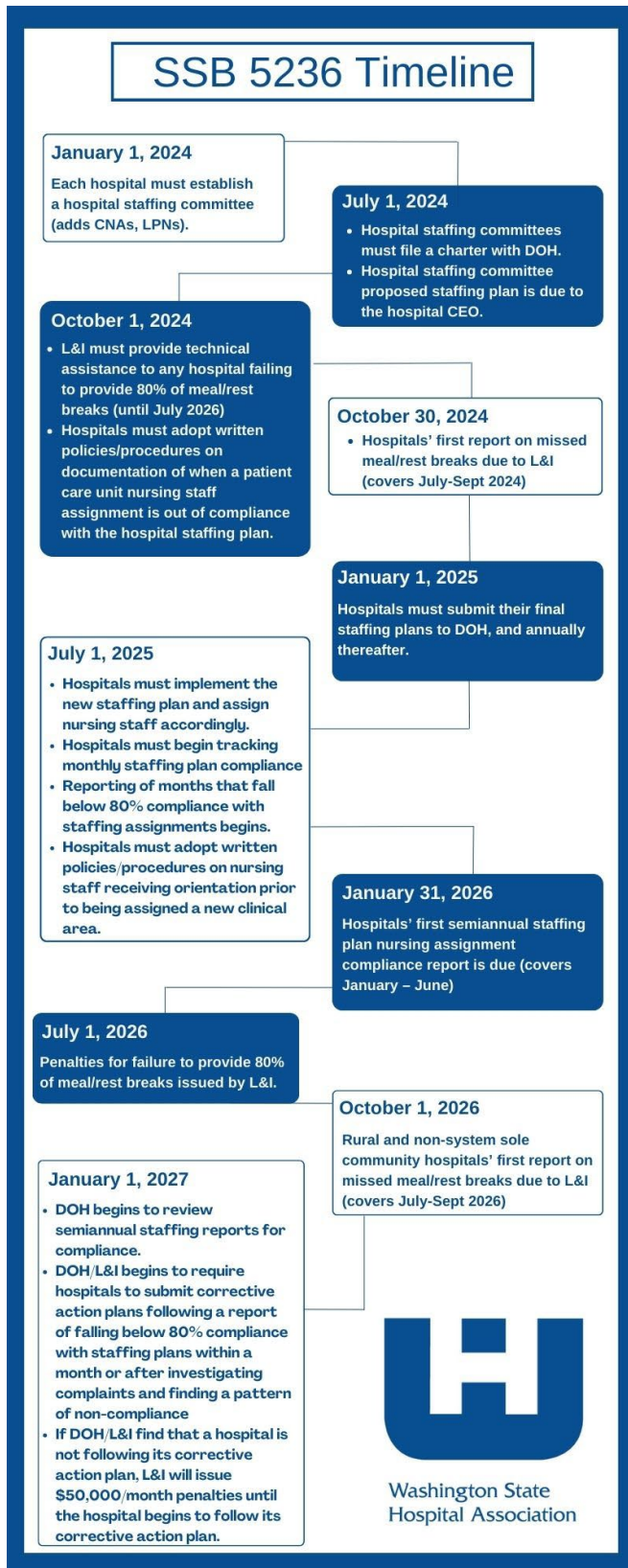
- L&I must investigate complaints alleging a violation of the mandatory overtime law [RCW 49.28.140](#). (Same as current law).
  - Prohibits L&I from investigating complaints alleging violations that occurred three years before the date of the complaint.
- L&I has 90 days to investigate and issue either a citation and notice of assessment (fine) or a determination of compliance. L&I can extend the period with advanced written notice providing good cause for the extension and specifying its duration.
- If L&I's investigation finds that the allegations cannot be substantiated, L&I will issue a *closure letter* to both parties. *Note: This is a technical drafting error. Where it reads "closure letter," it was supposed to read "determination of compliance." We expect to resolve technical errors in the 2024 legislative session next year.*
- If L&I's investigation finds a violation, L&I must order the employer to pay a civil penalty. The penalties are the same as under current law:
  - \$1,000 per violation up to three violations;
  - \$2,500 for the fourth violation; or
  - \$5,000 per violation for the fifth and subsequent violations.
- Prohibits L&I to issue a penalty if the employer reasonably relied on:
  - A rule related to [RCW 49.28.140](#);
  - A written order, ruling, approval, opinion, advice, determination, or interpretation of the L&I director; or
  - An interpretive or administrative policy issued by L&I and filed with the code revisor.

- L&I must maintain accurate records of all of the above, for purposes of determining whether the employer is immune from civil penalties.
- Permits L&I to waive or reduce a penalty if the L&I director determines the hospital has taken corrective action to resolve the violation.
- Requires L&I to deposit all civil penalties in the supplemental pension fund.

**Section 13: Appeals of mandatory overtime enforcement actions (New chapter in [RCW 49.12](#))**

- An employer or employee aggrieved by a determination by L&I under Section 12 may file an appeal within 30 days of the department's determination. If not appealed within 30 days, the determination is final and binding.
- Once the appeal is filed with L&I, the results of the determination will be stayed pending final review of the L&I director.
- The L&I director must assign the hearing to an administrative law judge to conduct the hearing and issue an initial order. The standard of review is de novo.
- Any party seeking to challenge the judge's initial order must file a petition for administrative review with the director of L&I within 30 days of service of the initial order. The director will conduct the administrative review.
- The L&I director must issue all final orders after appeal of the initial order. The final order is subject to judicial review.

## Implementation Timeline of New Requirements



## **Next Steps**

- Review [E2SSB 5236](#) and WSHA educational materials, such as the implementation roadmap and checklists (additional resources coming soon).
- Join the informational WSHA Hospital Staffing information list by sending an email of interest with your name, email, hospital, and job title to Marli Diestel ([MarliD@wsha.org](mailto:MarliD@wsha.org)) to receive updates.
- Begin planning for compliance with the new law. This may include reviewing and updating hospital policies related to hospital staffing committees and documentation of compliance with existing laws.
- Complete WSHA surveys related to hospital staffing, as we will use them to inform our input into statewide policies around implementation of this law.
- Use your existing nurse staffing committee to begin a collaborative process of seating and chartering the new hospital staffing committee.
- Follow communications around the statewide Advisory Committee on Hospital Staffing. WSHA does not anticipate new rulemaking to implement this law, but the Advisory Committee will have input into decisions DOH and L&I will make about how to implement and enforce this law.

## **WSHA's 2023 New Law Implementation Guide**

Please visit [WSHA's new law implementation guide online](#). The Government Affairs team is hard at work preparing resources and information on the high priority bills that passed in 2023 to help members implement the new laws, as well as links to resources such as this bulletin. In addition, you will find the Government Affairs team's schedule for release of upcoming resources on other laws and additional resources for implementation.

## **References**

- [E2SSB 5236](#)
- [RCW 70.41.410 – Nurse staffing committee – Definitions](#)
- [RCW 70.41.420 – Nurse staffing committee](#)
- [RCW 70.41.425 – Nurse staffing – Department investigations](#)
- [RCW 49.12.480 – Meal and rest breaks for health care facility employees](#)
- [RCW 49.28.130 – Hours of health care facility employees – Definitions](#)
- [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](#)