

SAFE STAFFING LEGISLATION

SAFE STAFFING LEGISLATION HAS BEEN INTRODUCED in the Senate by prime sponsor Senator June Robinson. Because it is a new biennium Senator Robinson introduced a new bill with a new bill number. However, the bill is similar to the bill passed in the House in 2022. Most components of the bill go into effect after it is passed. The exception to this is the implementation of safe staffing standards to provide time for related workforce development provisions to go into effect. Rural critical access hospitals with fewer than 25 acute care beds and Sole Community hospitals are given extra time to meet the safe staffing standards.

The bill has three critical pieces: **1) safe staffing standards;** **2) improved staffing committee functions and accountability mechanisms;** **3) improved enforcement of existing laws including meal and rest breaks and mandatory overtime.** The bill also moves implementation and enforcement of the staffing provisions to the Department of Labor & Industries.

One major change between the 2022 version of the bill and 2023 is that staffing standards are no longer included in statute but instead will be developed through a rule making process with the Department of Labor & Industries.

SAFE STAFFING STANDARDS

- Directs L&I to conduct administrative rule making establishing numerical patient assignment limits for RNs and CNAs
- Nothing in this section precludes a hospital from assigning fewer patients to a direct care RN or direct care CNA than the limits established in this section.
- The limits established through rulemaking as designated in this section do not decrease any nurse-to-patient staffing levels in effect pursuant to a collective bargaining agreement or hospital's staffing plan in effect on the effective date of this section.
- RNs and CNAs may not be assigned to a nursing unit or clinical area unless that individual has first received orientation in that clinical area sufficient to function independently. RNs and CNAs shall be provided with education and training to insure demonstrated current competence in providing care in that specialty area. No nurse or CNA shall be expected to provide care or perform a task for which they have not been properly trained.
- L&I will adopt rules no later than July 1, 2025.
- L&I will review the rules five years after adoption and report to the Legislature any proposed changes

STAFFING COMMITTEES

- Adds ancillary direct care staff to the hospital staffing committee and requires 50 percent of the staffing committee to consist of nonsupervisory/nonmanagerial nurses and ancillary staff. The makeup of the nonmanagement portion will be determined by the union(s). The other 50 percent consists of administration, including the CFO and CNO.
- Hospital staffing plans must be submitted in a standardized format provided by L&I.
- Requires the staffing plan to meet the safe staffing standards created through rule making.
- Requires the CEO to provide feedback on the staffing plan but requires the staffing committee to adopt the plan (i.e., removes the current CEO veto power).
- Sets a \$25,000 fine if a hospital doesn't submit a staffing plan to the state
- Sets a \$5,000 per day fine for each day that the staffing plan is not adopted by the staffing committee (\$100 per day for critical access, fewer than 25 acute care beds, and sole community hospitals), and directs that the previous staffing plan remain in effect until the new staffing plan is adopted.
- Clarifies that all complaints submitted to the staffing committee must be reviewed, regardless of the format of the complaint.
- Requires each hospital staffing committee to operate under a charter with specified requirements.
- Says L&I must investigate complaints.
 - L&I will not find hospitals in violation if the hospital shows: 1) there were unforeseeable emergency circumstances; or 2) the hospital, after consultation with the hospital staffing

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committee, documents that the hospital has made reasonable efforts to obtain and retain staffing to meet required personnel assignments but has been unable to do so.

- No later than 30 days after a hospital deviates from its staffing plan, the hospital incident command shall report to the cochairs of the hospital staffing committee an assessment of the staffing needs arising from the unforeseeable emergency circumstance and the hospital's plan to address those identified staffing needs.
- Upon receipt of the report, the hospital staffing committee shall convene to develop a contingency staffing plan to address the needs arising from the unforeseeable emergency circumstance.
- The hospital's deviation from its staffing plan may not be in effect for more than 90 days without the approval of the hospital staffing committee.
- Updates the definition of unforeseeable emergency circumstance to mean:
 - Any declared national, state, or municipal emergency; or
 - When a hospital disaster plan is activated.
- Sets a \$5,000 per day fine for each day that the hospital fails to submit or follow a corrective action plan for a violation (\$100 per day for critical access, fewer than 25 acute care beds, and sole community hospitals). Civil penalties apply until the hospital submits a corrective action plan and follows the corrective action plan for 90 days (after 90 days, the fine may be reduced).
- L&I must report violations on its website.
- Removes the previous requirement for a report to the legislature.
- Removes the sunset provision on the staffing committee enhancements.

ENFORCEMENT OF EXISTING LAWS

Staffing law

- Requires L&I to review each submitted hospital staffing plan.
- Failure to submit the staffing plan or a staffing committee charter to L&I by the appropriate deadline will result in a violation and civil penalty of \$25,000.

Meal and rest breaks and mandatory overtime

- Points to the updated definition of unforeseeable emergency circumstance.
- Says pre-scheduled on-call is not to exceed 60 hours per month.
- Says pre-scheduled on call cannot be used for scheduled procedures that have known time of completion after an employee's regular shift.
- Clarifies that employers must use reasonable efforts to obtain and retain staff – and says that an employer has not used reasonable efforts if overtime work is used to fill vacancies resulting from chronic staff shortages that persist longer than three months.
- Says L&I shall investigate complaints and issue either a citation and notice of assessment or a closure letter, within 90 days after the date on which the department received the complaint.
- The maximum penalty is \$1,000 for each violation up to three violations; four or more violations for a health care facility, the employer is subject to a civil penalty of \$2,500 for the fourth violation, and \$5,000 for each subsequent violation.
- Provides an appeals process for employers (consistent with other L&I appeals processes).
- Gives L&I rulemaking authority including, but not limited to, protecting employees from retaliation for filing complaints under this chapter.

Timeline of implementation

- Effective January 1, 2024
- Newly improved staffing committees must be in place under these standards by September 2024
- First committee-drafted plan filed, and hospitals staffed accordingly by July 2025
- L&I finishes staffing minimums rule making by January 2027
- Hospital staffing plans comply with rules July 2027

What is rule making?

After laws, or statutes, are passed by the state Legislature and signed by the Governor, they are compiled in the Revised Code of Washington, or RCWs. Rules to carry out those laws – which are sometimes called regulations and sometimes called WACs, for the Washington Administrative Code – are adopted by agencies through a process mandated in law by Washington's Administrative Procedure Act (APA).

The APA sets out exactly what steps an agency has to follow to adopt rules. Different processes are provided for different kinds of rules. The same basic process is used to adopt, amend, or repeal a rule. It has three formal steps.