

# STATE OF NEW YORK

8064

2019-2020 Regular Sessions

## IN ASSEMBLY

May 31, 2019

Introduced by M. of A. EPSTEIN, BRONSON -- read once and referred to the Committee on Labor

AN ACT to amend the labor law, in relation to requiring home care aide overtime to be voluntary

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. The labor law is amended by adding a new section 167-a to  
2 read as follows:

3 § 167-a. Hours of labor for home care aides. 1. For purposes of this  
4 section: (a) "Home care aide" means a home health aide, personal care  
5 aide, personal care attendant, home attendant or other licensed or unli-  
6 censed person whose primary responsibility includes the provision of  
7 in-home assistance with activities of daily living, instrumental activ-  
8 ities of daily living or health-related tasks, or the provision of  
9 companionship or fellowship. The provisions of this section shall apply  
10 equally to services provided by home care aides who work on episodes of  
11 care as direct employees of the care recipient, certified home health  
12 agencies, long term home health care programs, or managed care plans, or  
13 as employees of licensed home care services agencies, limited licensed  
14 home care services agencies, or under any other arrangement.

15 (b) "Unforeseeable emergent circumstance" means an unpredictable or  
16 unavoidable occurrence that requires immediate action.

17 2. Notwithstanding any provision of law to the contrary, no employer  
18 shall require a home care aide to work in excess of twelve hours per day  
19 or fifty hours per week except as provided for in subdivision four of  
20 this section. Any requirement of a home care aide to work overtime  
21 contained in any contract, agreement or understanding executed or  
22 renewed after the effective date of this section shall be void.

23 3. The acceptance by any home care aide of overtime work shall be  
24 voluntary. Consent to work overtime must be expressly provided by the  
25 employee. Consent to work overtime on a specific occasion shall not

EXPLANATION--Matter in italics (underscored) is new; matter in brackets  
[-] is old law to be omitted.

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1 constitute implied consent to work overtime in the future. The refusal  
2 of a home health aide to accept overtime work shall not be grounds for  
3 discrimination, dismissal, discharge, threats, or any other penalty or  
4 employment decision adverse to the employee.

5 4. The requirements this section shall not apply in case of an unfore-  
6 seeable emergent circumstance when overtime is determined necessary, and  
7 is not used to fill vacancies resulting from short staffing, provided  
8 that the employer has exhausted reasonable efforts to obtain proper  
9 staffing. Where an unforeseeable emergent circumstance is due to the  
10 delayed arrival of a home care aide who is relieving a home care aide  
11 who has worked the maximum number of hours for such day pursuant to  
12 subdivision two of this section, such overtime shall not exceed two  
13 hours without acceptance of such overtime pursuant to the provisions of  
14 subdivision three of this section.

15 5. An employer shall not threaten, discharge or in any other manner  
16 discriminate, penalize or take adverse action against a home health aide  
17 because they have made any complaint that the employee has been required  
18 to work overtime in violation of the provisions of this section:

19 (a) to their employer, including the employer's representative or  
20 agent;

21 (b) to the commissioner or the department; or

22 (c) to any other state or federal agency.

23 6. (a) A home care aide may bring a civil action in a court of compe-  
24 tent jurisdiction against any employer or his or her agent, or the offi-  
25 cer or agent of any corporation, partnership, or limited liability  
26 company, or any other person who violates subdivision two, three or five  
27 this section. An employer or other person who violates such subdivisions  
28 shall be liable for all legal and/or equitable relief as may be appro-  
29 priate to effectuate the purposes of this section, including but not  
30 limited to compensatory damages for loss of consortium, liquidated  
31 damages, punitive damages, and reinstatement and back wages, in addition  
32 to injunctive relief and any other appropriate relief. An employer or  
33 other person who is found to have violated subdivision two, three, or  
34 five of this section shall also be liable for the payment of reasonable  
35 attorney's fees.

36 (b) If the commissioner determines that an employer or employer's  
37 agent or the officer or agent of any corporation, partnership, or limit-  
38 ed liability company, or any other person has violated subdivision two,  
39 three, or five of this section the commissioner may issue sanctions and  
40 penalties, including, but not limited to compensatory damages for loss  
41 of consortium, liquidated damages, and punitive damages, and may also  
42 order reinstatement, back wages, injunctive relief, and all other appro-  
43 priate relief.

44 § 2. This act shall take effect immediately.