

STATE OF NEW YORK

6640

2019-2020 Regular Sessions

IN SENATE

July 31, 2019

Introduced by Sen. PERSAUD -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the labor law, in relation to maximum hours for home care aides

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, consumer directed personal assistant,
6 home attendant or other licensed or unlicensed person whose primary
7 responsibility includes the provision of in-home assistance with activ-
8 ities of daily living, instrumental activities of daily living or
9 health-related tasks, or the provision of companionship or fellowship.
10 The provisions of this section shall apply equally to services provided
11 by home care aides who work on episodes of care as direct employees of
12 the care recipient, certified home health agencies, long term home
13 health care programs, or managed care plans, or as employees of licensed
14 home care services agencies, limited licensed home care services agen-
15 cies, or under any other arrangement.

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

18 (c) "Maximum home care hours" shall mean a single shift that consists
19 of twelve hours per day or multiple shifts that in combination total
20 fifty hours per week.

21 2. (a) Notwithstanding any provision of law to the contrary, no
22 employer shall assign a home care aide to more than the maximum home
23 care hours except as provided for in subdivision four of this section.

24 (b) Any requirement of a home care aide to accept an assignment for
25 more than the maximum home care hours contained in any contract, agree-

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

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1 ment or understanding executed or renewed after the effective date of
2 this section shall be void.

3 3. The agreement of any home care aide to accept an assignment for
4 more than the maximum home care hours shall be voluntary. Consent to
5 accept an assignment for more than the maximum home care hours must be
6 expressly provided by the employee. Consent to accept an assignment for
7 more than the maximum home care hours on a specific occasion shall not
8 constitute implied consent to accept such assignment in the future. The
9 refusal of a home care aide to accept an assignment for more than the
10 maximum home care hours shall not be grounds for discrimination,
11 dismissal, discharge, threats, or any other penalty or employment deci-
12 sion adverse to the employee.

13 4. (a) The provisions set forth in subdivision two of this section
14 shall not apply in case of an unforeseeable emergent circumstance when
15 assignment for more than the maximum home care hours is determined
16 necessary, provided that the employer has exhausted all reasonable
17 efforts to obtain proper staffing. However, such assignment shall not
18 exceed four hours over a twelve-hour shift or a fifty-hour cumulative
19 workweek that the home care aide has already performed, and shall be
20 subject to the requirement of consent pursuant to subdivision three of
21 this section.

22 (b) Where an unforeseeable emergent circumstance is due to the delayed
23 arrival of a home care aide who is relieving a home care aide who has
24 worked the maximum number of hours for such day pursuant to subdivision
25 two of this section, such assignment shall not exceed two hours without
26 acceptance of such overtime pursuant to the provisions of subdivision
27 three of this section.

28 (c) Except as provided for in paragraph (b) of this subdivision, a
29 staffing shortage may not constitute an unforeseeable circumstance.

30 5. An employer shall not threaten, discharge or in any other manner
31 discriminate, penalize or take adverse action against a home health care
32 because they have made any complaint that the employee has been required
33 to accept an assignment for more than the maximum home care hours in
34 violation of the provisions of this section:

35 (a) to their employer, including the employer's representative or
36 agent;

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

38 (c) to any other city, state or federal agency.

39 6. (a) A home care aide may bring a civil action in a court of compe-
40 tent jurisdiction against any employer or his or her agent, or the offi-
41 cer or agent of any corporation, partnership, or limited liability
42 company, or any other person who violates subdivision two, three, four,
43 or five this section. An employer or other person who violates such
44 subdivisions shall be liable for all legal and/or equitable relief as
45 may be appropriate to effectuate the purposes of this section, including
46 but not limited to compensatory damages for loss of consortium, liqui-
47 dated damages, punitive damages, and reinstatement and back wages, in
48 addition to injunctive relief and any other appropriate relief. An
49 employer or other person who is found to have violated subdivision two,
50 three, four or five of this section shall also be liable for the payment
51 of reasonable attorney's fees.

52 (b) On behalf of any home care aide, the commissioner may bring any
53 legal action necessary, including administrative action and civil
54 action, to bring a claim for a violation of subdivisions two, three,
55 four, or five of this section. Further, if the commissioner determines
56 that an employer or employer's agent or the officer or agent of any

1 corporation, partnership, or limited liability company, or any other
2 person has violated subdivision two, three, four or five of this section
3 the commissioner may issue sanctions and penalties, including, but not
4 limited to compensatory damages for loss of consortium, liquidated
5 damages, and punitive damages, and may also order reinstatement, back
6 wages, injunctive relief, and all other appropriate relief.

7 § 2. This act shall take effect immediately.