STATE OF NEW YORK

3145--A

2021-2022 Regular Sessions

IN ASSEMBLY

January 22, 2021

Introduced by M. of A. EPSTEIN, BRONSON, REYES, GLICK, SEAWRIGHT, FERNANDEZ, L. ROSENTHAL, SIMON, McDONOUGH, GRIFFIN, PICHARDO, MITAYNES -- read once and referred to the Committee on Labor -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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:

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

§ 167-a. Hours of labor for home care aides. 1. For purposes of this section: (a) "Home care aide" means a home health aide, personal care aide, personal care attendant, consumer directed personal assistant, home attendant or other licensed or unlicensed person whose primary responsibility includes the provision of in-home assistance with activities of daily living, instrumental activities of daily living or health-related tasks, or the provision of companionship or fellowship. The provisions of this section shall apply equally to services provided by home care aides who work on episodes of care as direct employees of the care recipient, certified home health agencies, long term home health care programs, or managed care plans, or as employees of licensed home care services agencies, limited licensed home care services agencies, or under any other arrangement.

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

(c) "Maximum home care hours" shall not exceed fifty hours per week and may not include (i) consecutive twelve hour shifts per twenty-four hour period or (ii) any one single shift exceeding twelve hours per twenty-four hour period.

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

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2. (a) The provision of care to persons requiring twenty-four hours of care shall take the form of split shifts of twelve hours each. Neither this requirement nor any other requirement in this section shall be used to reduce the hours of authorized care for patients. Notwithstanding any provision of law to the contrary, no employer shall assign a home care aide to more than the maximum home care hours except as provided for in subdivision three of this section.

(b) Any requirement of a home care aide to accept an assignment for more than the maximum home care hours contained in any contract, agreement or understanding executed or renewed after the effective date of this section shall be void.

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

(b) The agreement of any home care aide to accept an assignment for more than the maximum home care hours shall be voluntary. Consent to accept an assignment for more than the maximum home care hours shall be expressly provided by the employee. Consent to accept an assignment for more than the maximum home care hours on a specific occasion shall not constitute implied consent to accept such assignment in the future. The refusal of a home care aide to accept an assignment for more than the maximum home care hours shall not be grounds for discrimination, dismissal, discharge, threats, or any other penalty or employment decision adverse to the employee.

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

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

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

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

(b) to the commissioner or the department; or

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

5. (a) A home care aide may bring a civil action in a court of competent jurisdiction against any employer or his or her agent, or the officer or agent of any corporation, partnership, or limited liability company, or any other person who violates subdivision two, three or four of this section. An employer or other person who violates such subdivisions shall be liable for all legal and/or equitable relief as may be appropriate to effectuate the purposes of this section, including but not limited to compensatory damages for loss of consortium, liquidated

damages, punitive damages, and reinstatement and back wages, in addition to injunctive relief and any other appropriate relief. An employer or other person who is found to have violated subdivision two, three or four of this section shall also be liable for the payment of reasonable attorney's fees.

(b) On behalf of any home care aide, the commissioner may bring any legal action necessary, including administrative action and civil action, to bring a claim for a violation of subdivision two, three or four of this section. Further, if the commissioner determines that an employer or employer's agent or the officer or agent of any corporation, partnership, or limited liability company, or any other person has violated subdivision two, three or four of this section the commissioner may issue sanctions and penalties, including, but not limited to compensatory damages for loss of consortium, liquidated damages, and punitive damages, and may also order reinstatement, back wages, injunctive relief, and all other appropriate relief.

§ 2. This act shall take effect immediately.