

STATE OF NEW YORK

359

2021-2022 Regular Sessions

IN SENATE

(Prefiled)

January 6, 2021

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

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.

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

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

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

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

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

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

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

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

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

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

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

54 (b) On behalf of any home care aide, the commissioner may bring any
55 legal action necessary, including administrative action and civil
56 action, to bring a claim for a violation of subdivisions two, three,

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

9 § 2. This act shall take effect immediately.