

STATE OF NEW YORK

359--A

2021-2022 Regular Sessions

IN SENATE

(Prefiled)

January 6, 2021

Introduced by Sens. PERSAUD, BAILEY, BIAGGI, BRISPORT, BROOKS, BROUK, GIANARIS, HOYLMAN, JACKSON, KAVANAGH, LIU, MAY, MYRIE, RAMOS, RIVERA, SALAZAR, SANDERS, STAVISKY -- read twice and ordered printed, and when printed to be committed to the Committee on Labor -- recommitted to the Committee on Labor in accordance with Senate Rule 6, sec. 8 -- 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:

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 not exceed fifty hours per week
19 and may not include (i) consecutive twelve hour shifts per twenty-four

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

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1 hour period or (ii) any one single shift exceeding twelve hours per
2 twenty-four hour period.

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

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

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

23 (b) The agreement of any home care aide to accept an assignment for
24 more than the maximum home care hours shall be voluntary. Consent to
25 accept an assignment for more than the maximum home care hours shall be
26 expressly provided by the employee. Consent to accept an assignment for
27 more than the maximum home care hours on a specific occasion shall not
28 constitute implied consent to accept such assignment in the future. The
29 refusal of a home care aide to accept an assignment for more than the
30 maximum home care hours shall not be grounds for discrimination,
31 dismissal, discharge, threats, or any other penalty or employment deci-
32 sion adverse to the employee.

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

39 (d) Except as provided for in paragraph (c) of this subdivision, a
40 staffing shortage may not constitute an unforeseeable emergent circum-
41 stance.

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

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

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

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

51 5. (a) A home care aide may bring a civil action in a court of compe-
52 tent jurisdiction against any employer or his or her agent, or the offi-
53 cer or agent of any corporation, partnership, or limited liability
54 company, or any other person who violates subdivision two, three or four
55 of this section. An employer or other person who violates such subdivi-
56 sions shall be liable for all legal and/or equitable relief as may be

1 appropriate to effectuate the purposes of this section, including but
2 not limited to compensatory damages for loss of consortium, liquidated
3 damages, punitive damages, and reinstatement and back wages, in addition
4 to injunctive relief and any other appropriate relief. An employer or
5 other person who is found to have violated subdivision two, three or
6 four of this section shall also be liable for the payment of reasonable
7 attorney's fees.

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

19 § 2. This act shall take effect immediately.