

# STATE OF NEW YORK

10618

## IN ASSEMBLY

June 20, 2024

Introduced by COMMITTEE ON RULES -- (at request of M. of A. Kim, Epstein) -- read once and referred 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 (i) consecutive twelve-hour  
19 shifts per twenty-four hour period or (ii) any one single shift exceed-  
20 ing twelve hours per twenty-four hour period.

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-  
26 ment or understanding executed or renewed after the effective date of  
27 this section shall be void.

28 3. The agreement of any home care aide to accept an assignment for  
29 more than the maximum home care hours shall be voluntary. Consent to  
30 accept an assignment for more than the maximum home care hours must be  
31 expressly provided by the employee. Consent to accept an assignment for

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

LBD09991-02-3

1 more than the maximum home care hours on a specific occasion shall not  
2 constitute implied consent to accept such assignment in the future. The  
3 refusal of a home care aide to accept an assignment for more than the  
4 maximum home care hours shall not be grounds for discrimination,  
5 dismissal, discharge, threats, or any other penalty or employment deci-  
6 sion adverse to the employee.

7 4. (a) The provisions set forth in subdivision two of this section  
8 shall not apply in case of an unforeseeable emergent circumstance when  
9 assignment for more than the maximum home care hours is determined  
10 necessary, provided that the employer has exhausted all reasonable  
11 efforts to obtain proper staffing. However, such assignment shall not  
12 exceed four hours over a twelve-hour shift, and shall be subject to the  
13 requirement of consent pursuant to subdivision three of this section.

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

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

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

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

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

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

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

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

55 § 2. This act shall take effect immediately.