



Legislation Text

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Int. No. 615

By Council Member Marte, the Public Advocate (Mr. Williams) and Council Members Hanif, Holden, Louis, Won, Banks, Hanks, Cabán, Ossé, Nurse, Restler, Feliz and Marmorato

A Local Law to amend the administrative code of the city of New York, in relation to maximum working hours for home care aides

Be it enacted by the Council as follows:

Section 1. Paragraph 3 of subdivision a of section 20-1208 of the administrative code of the city of New York, as amended by local law number 80 for the year 2020, is amended to read as follows:

3. For each violation of:

(a) Section 20-1204,

(1) Rescission of any discipline issued, reinstatement of any employee terminated and payment of back pay for any loss of pay or benefits resulting from discipline or other action taken in violation of section 20-1204;

(2) \$500 for each violation not involving termination; and

(3) \$2,500 for each violation involving termination;

(b) Section 20-1221, \$200 and an order directing compliance with section 20-1221;

(c) Section 20-1222, payment of schedule change premiums withheld in violation of section 20-1222 and \$300;

(d) Section 20-1231, payment as required under section 20-1231, \$500 and an order directing compliance with section 20-1231;

(e) Section 20-1241, \$300 and an order directing compliance with section 20-1241;

(f) Subdivision a of section 20-1251, the greater of \$500 or such employee's actual damages;

(g) Subdivisions a and b of section 20-1252, \$300; [and]

(h) Subdivision a or b of section 20-1262, \$500 and an order directing compliance with such subdivision, provided, however, that an employer who fails to provide an employee with the written response required by subdivision a of section 20-1262 may cure the violation without a penalty being imposed by presenting proof to the satisfaction of the department that it provided the employee with the required written response within seven days of the department notifying the employer of the opportunity to cure; and

(i) Section 20-1282, \$500 and an order directing compliance with section 20-1282.

§ 2. Subdivision a of section 20-1211 of the administrative code of the city of New York, as amended by local law number 2 for the year 2021, is amended to read as follows:

a. Claims. Any person, including any organization, alleging a violation of the following provisions of this chapter may bring a civil action, in accordance with applicable law, in any court of competent jurisdiction:

1. Section 20-1204;

2. Section 20-1221;

3. Subdivisions a and b of section 20-1222;

4. Section 20-1231;

5. Subdivisions a, b, d, f and g of section 20-1241;

6. Section 20-1251;

7. Subdivisions a and b of section 20-1252; [and]

8. Section 20-1272; and

9. Section 20-1282.

§ 3. Chapter 12 of title 20 of the administrative code of the city of New York is amended by adding a new subchapter 8 to read as follows:

SUBCHAPTER 8

MAXIMUM HOURS FOR HOME CARE AIDES

§ 20-1281 Definitions. As used in this subchapter, the following terms have the following meanings:

Home care aide. The term “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, excluding any person who provides any such service to a family member.

Shift. The term “shift” means any period of time during which a home care aide: (i) is the sole home care aide at the place of employment who is able to provide the services for which the home care aide is engaged; (ii) is required to be available to provide such services; or (iii) is not permitted to leave the place of employment.

Unforeseeable emergent circumstance. The term “unforeseeable emergent circumstance” means an unpredictable or unavoidable occurrence that requires immediate action.

§ 20-1282 Maximum home care hours. a. No employer shall assign any home care aide to work:

1. Any single shift exceeding 12 hours;
2. Consecutive 12-hours shifts; or
3. Shifts totaling more than 12 hours in any 24-hour period.

b. In the event of an unforeseeable emergent circumstance, an employer may assign a home care aide hours in excess of the limitations set forth in subdivision a, provided that the employer has exhausted all reasonable efforts to obtain proper staffing. Such excess hours shall not exceed 2 hours per day or 10 hours per week. A staffing shortage shall not constitute an unforeseeable emergent circumstance.

c. Except when subdivision b of this section applies, no employer shall assign any home care aide to work more than 56 hours in a week unless the employer:

1. Provides notice to propose such assignment to such home care aide 2 weeks in advance of the first day of the applicable week;

2. Obtains consent to such assignment from such home care aide in writing before the applicable week, which may be provided electronically; and

3. Files with the department, in a manner acceptable to the commissioner, a record containing the following information related to such assignment:

(a) The date and hours of each shift assigned;

(b) The wages and any other compensation to be paid for such assignment;

(c) Proof of compliance with paragraph 1 of this subdivision in a manner acceptable to the commissioner;

(d) The basis for assigning hours in excess of 56 in a week; and

(e) Any other information the commissioner requires for the purpose of carrying out the provisions of this section.

d. Any requirement of a home care aide to accept an assignment for hours in excess of the limitations set forth in subdivision a contained in any contract, agreement, or understanding executed or renewed after the effective date of the local law that added this section shall be void.

e. The department shall maintain all records submitted pursuant to subdivision c of this section for the purpose of enforcing the requirements of this section. The commissioner shall determine a maximum amount of such records that may be filed by an employer in any 3-month period before an audit of such employer's records shall be conducted to assess compliance with this section. Any such audit may include interviews with affected home care aides, or 15 percent of the total number of home care aides employed by such employer, whichever is larger. Upon request by a home care aide, the department shall provide interpretation services for the purpose of conducting an interview pursuant to this subdivision.

§ 20-1283 Notice of rights. a. In addition to outreach and education conducted pursuant to section 12-

1202, the commissioner shall develop a form notice of rights intended to inform home care aides of their rights under this subchapter and the manner in which violations of this subchapter may be enforced. Such form notice shall be posted on the department's website and provided to any person upon request. Such notice shall be made available in no fewer than 10 languages, and translated into additional languages upon the request of an employer or a home care aide.

b. An employer of a home care aide shall provide such home care aide with a copy of the form notice required by subdivision a of this section in the preferred language of such home care aide.

§ 4. Chapter 1 of title 21 of the administrative code of the city of New York is amended by adding a new section 21-153 to read as follows:

§ 21-153 Maximum hours for home care aides. The commissioner shall establish a program for the purpose of facilitating compliance with subchapter 8 of chapter 12 of title 20 in the administration of medicaid.

§ 5. This local law takes effect October 1, 2024, except that the commissioner of consumer and worker protection and the commissioner of social services shall make best efforts to conduct outreach and education about the provisions of this local law to persons affected by this local law, including home care aides, employers of home care aides, and patients of home care aides, before such date.

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