



Legislation Text

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Int. No. 175

By Council Member Marte, the Public Advocate (Mr. Williams) and Council Members Cabán, Hanif, Won, Restler, Ossé, Nurse, De La Rosa, Gutiérrez, Holden, Richardson Jordan, Barron and Sanchez

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.

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

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.

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

1. Any one single shift exceeding 12 hours;
2. Consecutive 12-hours shifts;
3. Shifts totaling more than 12 hours in any 24-hour period; or
4. Hours in excess of 50 per week.

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

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

§ 4. This local law takes effect 90 days after it becomes law.

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