

Michael Paglialonga  
NYS Department of Labor  
State Office Campus, Building 12, Room 509  
Albany, NY 12240  
[comments@labor.ny.gov](mailto:comments@labor.ny.gov)

Re: I.D. No. LAB-17-18-00005P, Response to Proposed Rulemaking: Hours Worked, 24-Hour Shifts

Dear Mr. Paglialonga,

We submit this comment on the New York Department of Labor rule: Hours Worked, 24-Hour Shifts (Hours Worked, 24-Hour Shifts, 17 NYS Reg. 43 (proposed April 25, 2018)). We oppose this proposed rule and urge the DOL to withdraw it. The proposed rule devalues the labor of home care aides who work 24-hour shifts and deserve to be paid for all hours worked. The rule also diminishes the quality of care that clients, who depend on home care aides to live independently, receive.

For more than fifty years, the National Center for Law and Economic Justice has fought for the rights of low-income people, including low-wage workers and people with disabilities, both in New York and across the United States through litigation, policy advocacy, and support for low-income organizing. Among our clients are home care workers in New York City and organizations who represent them.

The proposed rule is a drastic departure from the basic requirements of the New York State Minimum Wage Act that every employee be paid not less than the statutory minimum wage for each hour worked. It also undercuts the fundamental purpose of the Minimum Wage Act, which is meant to eliminate the employment of persons at “wages insufficient to provide adequate maintenance for themselves and their families.” (See Labor Law § 650). Currently, under an emergency regulation, many home care aides are paid for fewer hours than they work. The proposed rule would not only make this circumvention of the Minimum Wage Act permanent, but could expand its scope beyond the home care industry.

More than 160,000 people work as home care aides in New York City alone.<sup>1</sup> They deliver crucial services to many New Yorkers with disabilities and the elderly, and they enable these individuals to maintain their independence in the community in lieu of placement in a nursing home or repeated hospitalizations. Home care aides deliver services such as personal care services, which provide assistance with personal hygiene, dressing and feeding, nutritional and environmental support functions such as assistance with toileting, walking, transferring, and other tasks essential to the maintenance of the person’s health or safety in his or her own home.

Despite holding primary responsibility for the delivery of these vital and life-changing services, many employees of the home care industry financially struggle. In New York City, a home care aide’s annual earnings averages less than \$20,000.<sup>2</sup> More than half live in households earning less

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<sup>1</sup> See New York City Department of Consumer Affairs, *Lifting Up Paid Care Work: Year One of New York City’s Paid Care Division* at 11 (March 2018), available at: <http://www1.nyc.gov/assets/dca/downloads/pdf/workers/Lifting-up-Paid-Care-Work.pdf>.

<sup>2</sup> *Id.* at 15

than \$50,000 per year.<sup>3</sup> Approximately 26% of this population have incomes below the New York City poverty threshold, and 37% receive food stamps.<sup>4</sup>

The proposed rule, which would relegate a subset of home care aides to receive sub-minimum wages, also drastically impacts a field that has traditionally employed more women than men. Within New York City, more than 93% of home care aides are female, and they are disproportionately women of color.<sup>5</sup> The proposed rule will only exacerbate and deepen racial and gender inequality in New York.

Home care aides assigned to 24-hour shifts are, by the nature of their work, required to be on call during meal and sleep breaks. When working 24-hour shifts, their principal job assignment is to provide round-the-clock care to their care recipients. In the course of our work, NCLEJ has spoken to numerous home care aides working 24 hour shifts, and few actually receive the sleep and meal breaks that the proposed rule imagines. The nature of the work performed by home care aides necessitates their continued presence in care recipients' homes, requiring workers to be away from their own homes and families, with no control over how their time is spent for days at a time.

Multiple workers have described caring for clients with Alzheimer's or dementia, who must be watched 24 hours a day, and clients who are bed bound, who must be turned at two hour intervals around the clock. It is impossible for workers caring for such patients to obtain uninterrupted sleep and meal times, and, in our experience, these working conditions are the norm for home care workers on 24-hour shifts.

Since the Notice of Proposed Rule Making was published, we have heard from numerous workers that their employers have told them that while on 24-hour shifts, they are not allowed to assist clients during the night, and that if their client calls for help, they should ignore them. Workers are thus forced to choose between risking their jobs and letting their clients, many of whom are unable to get to the bathroom, obtain medication, and take care of other personal needs independently, suffer.<sup>6</sup> The rule has not even been promulgated, and it is already impacting the health and safety of New Yorkers with disabilities, and forcing home care aides to choose between their own jobs and harming their clients. Home care workers deserve fair pay, and their clients deserve the quality, round the clock care that they require to remain in their own homes and communities.

NCLEJ strongly opposes the proposed rule because of the unfairness to home care aides who deserve fair payment for 24-hour shifts, and because of the negative impact it has on the home care clients.

Sincerely,

Katharine Deabler-Meadows

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<sup>3</sup> Id at 15

<sup>4</sup> Id at 17

<sup>5</sup> Id at 16

<sup>6</sup> Workers have been threatened with disciplinary action, and in some cases terminated, for defying employer instructions and responding to client calls for help in the middle of the night.