

New York's Highest Court Upholds "13 Hour Rule" for Home Health Aides Working 24-Hour Shifts

On March 26, 2019, the New York State Court of Appeals issued a [ruling](#) that will have a significant positive impact on home care agencies across the state. In a five-to-two decision, the Court upheld the validity of the New York State Department of Labor's "13 Hour Rule" for cases involving 24-hour live-in care. Under the "13 Hour Rule," a residential employee assigned to work a 24-hour shift need only be paid for 13 of those hours, so long as he or she is provided with an 8-hour sleep break and three hours of meal breaks. (If the employee's meal breaks are interrupted, or if the employee does not get five uninterrupted hours of sleep, the employer must pay for the entire break.) Bond, Schoeneck & King, PLLC, participated in the case, representing amicus curiae ("friend of the court") Consumer Directed Personal Assistance Association of New York State.

Under New York Labor Law, all employees -- including home health care aides -- must be paid a minimum wage for each hour worked. The New York State Department of Labor (DOL) has authority to set that minimum wage by issuing "wage orders" that are published as regulations. Home health care aides are covered by the DOL's [Minimum Wage Order for Miscellaneous Industries and Occupations](#), which provides that an employee must be paid for the time he is "permitted to work, or is required to be available to work at a place prescribed by the employer." The Wage Order further specifies that a residential employee shall not be deemed permitted to work or required to be available for work: (1) during the employee's normal sleeping hours solely because the employee is required to be on call during such hours; or (2) at any other time when the employee is free to leave the place of employment.

In March of 2010, the DOL issued an opinion letter in response to questions about the application of this Wage Order to home health care aides. In the letter, the DOL clarified that live-in employees must be paid for at least 13 hours per 24 hour period, provided that they are afforded at least 8 hours of sleep -- during which they actually receive five hours of interrupted sleep -- as well as three hours of work-free meal breaks. This interpretation has been challenged numerous times in the lower courts of New York.

In its ruling, New York's highest court jointly considered two appeals brought by groups of plaintiffs employed as home health aides who sought to bring a class action against their employers for violation of the Labor Law. Common to both appeals was whether the DOL's interpretation of its Wage Order should stand -- or whether an employer must pay its home health care aides for each hour of a 24-hour shift, even if 11 of those hours are comprised of sleep or break time.

The Court explained that it must exercise deference to the DOL when assessing the validity of its interpretation, stating that an agency such as the DOL is best positioned to explain for itself what it meant by the words it chose for the Wage Order. Accordingly, the Court stated it would uphold the DOL's interpretation of the Wage Order so long as it is not irrational, unreasonable, or in conflict with the plain meaning of the statute.

The plain text of the Wage Order requires employees to be paid only for time when they are required to be: (1) *available* to work; (2) *at a place* prescribed by the employer. The Court noted that a home health care aide will typically remain at his or her assigned location for the entirety of a 24-hour shift. The DOL has thus given meaning to this complete phrase by interpreting “available for work” in the context of a 24-hour shift to exclude the hours when the employee is not working because the employee is on a scheduled sleep or meal break. Therefore, pursuant to its deferential standard, the Court concluded that the DOL’s interpretation should stand.

Companies and agencies that employ home health care aides who wish to utilize the “13 Hour Rule” should consult with counsel to ensure that all the requirements of the rule are met. If the requirements are not met, an employer may risk liability for not paying employees for 11 hours of time per 24-hour shift.

If you have any questions about this Information Memo, please contact [Michael D. Billok](#), [Mary E. Aldridge](#), any of the [attorneys](#) in our [Labor and Employment Law Practice](#), or the attorney in the firm with whom you are regularly in contact.



Bond has prepared this communication to present only general information. This is not intended as legal advice, nor should you consider it as such. You should not act, or decline to act, based upon the contents. While we try to make sure that the information is complete and accurate, laws can change quickly. You should always formally engage a lawyer of your choosing before taking actions which have legal consequences. For information about our firm, practice areas and attorneys, visit our website, www.bsk.com. • Attorney Advertising • © 2019 Bond, Schoeneck & King PLLC

CONNECT WITH US ON LINKEDIN: [SEARCH FOR BOND, SCHOENECK & KING, PLLC](#)

FOLLOW US ON TWITTER: [SEARCH FOR BONDLAWFIRM](#)