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N.Y. Court of Appeals Sustains 13-Hour Rule For Payment of 24-Hour Home Care Workers

New York's highest court, the Court of Appeals, has issued its much-awaited decision as a result of the appeals from the rulings in *Andryeyeva v. New York Health Care, Inc.* and *Moreno v. Future Care Health Servs., Inc.* The Court's ruling essentially approves paying "live-in" health care aides per diem rate based on 13 hours for a 24 hour shift. Accordingly, the Court has fully and finally decided the matter, effectively approving the practice commonly referred to as the "13-hour rule" and rejecting the plaintiff's objections to that practice.

The matter was before the highest appellate court in New York State, the Court of Appeals; as such the matter is no longer subject to appeal before the New York courts. Peckar & Abramson's Labor Law and Employment Practices Group, with Aaron C. Schlesinger as lead counsel, represented the Defendants-Appellants in the *Moreno* matter and successfully argued the appeal. P&A remains involved in numerous matters involving this issue which are at all stages of litigation, including the active defense of many class actions against home health care providers.

This decision is welcome news to employers in the home health care industry. The Court ruled that the New York State Department of Labor's ("DOL") interpretation of the previous version of its Wage Order, as memorialized in the DOL's March 2010 Opinion Letter, was entitled to deference as it applies to home care workers who work 24-hour shifts on the premises of their clients. Pursuant to the March 2010, Opinion Letter, home care workers may be paid for 13 hours of their 24-hour shift so long as they receive adequate sleep and meal breaks. More specifically, in granting deference, the Court has endorsed the DOL's position that if home care workers receive eight hours of sleep—a minimum of five hours of uninterrupted sleep—and three hours of bona fide meal breaks, those hours may be excluded from the compensable work hours and the employee may be paid for 13 of the 24 hours.

In a 5-2 decision, the Court reversed two decisions of the Appellate Division, Second Department, which held that the DOL's interpretation of the Wage Order was not rational as it applied to home care workers who worked 24-hour shifts on the premises of their clients and required that employees be paid for all 24 hours of their shifts. The appellate court had permitted a class action to proceed on that basis.



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The Court of Appeals recognized the long-standing rule of the DOL which exempted sleep and meal time from the compensable hours worked for home care workers working live-in or 24-hour shifts. Further, the Court held that the DOL's interpretation of its Wage Order did not conflict with the promulgated language, nor did the DOL adopt an irrational or unreasonable construction. This interpretation is also in line with the federal government's guidance on compensable hours under the Fair Labor Standards Act.

It should be noted that, consistent with the DOL's interpretation and the Court's decision, it is still incumbent upon employers to ensure that their employees receive the requisite sleep and meal breaks and that adequate records are kept. Moreover, providers of home health care should carefully examine their workplace rules to ensure full compliance with this decision.

If you have any questions about the effect of this decision on your business, or other wage and hour issues affecting the home care industry, please contact us.

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