

N.Y. Court of Appeals Delivers Wage and Hour Victory to Home Care Industry Employers

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On March 26, 2019, New York's highest court delivered a victory for employers in the home care industry, clarifying that employers need only compensate home health aides for 13 hours of a 24-hour shift, provided the employees receive five hours of uninterrupted sleep during an eight-hour sleep break and three hours for meal breaks. [Andryeyeva v. New York Health Care, Inc. \(N.Y. Case Nos. 11 and 12 Mar. 26, 2019\)](#).

In this closely watched case, the Court of Appeals upheld the New York State Department of Labor's Wage Order for Miscellaneous Industries as a reasonable interpretation of the law, reversing two decisions of the Appellate Division, Second Department, which refused to defer to the Wage Order. In a 5-2 opinion, the Court of Appeals reviewed the relevant legislative history, as well as a March 2010 opinion letter from the NYSDOL concluding that "live-in employees must be paid not less than for thirteen hours per twenty-four hour period provided that they are afforded at least eight hours for sleep and actually receive five hours of uninterrupted sleep, and that they are afforded three hours for meals." New York home care employers have relied on this opinion letter and other NYSDOL guidance in determining their pay practices for live-in employees.

Although the plaintiffs and two dissenting judges argued that sleep and meal periods were compensable because the employees were "available for work at a place prescribed by the employer" throughout the day and night, the majority disagreed, finding no conflict between the requirements of the job and the NYSDOL's interpretation of the law. The Court held that the Appellate Division failed to afford adequate deference to the agency's interpretation of the law, and remanded for further proceedings.

On remand, the plaintiffs may still seek class certification for claims involving "failure to adequately compensate home health care aides when they did not receive the minimum time for sleep and meal breaks during their 24-hour shifts, maintain adequate records of, or compensate for, the hours actually worked, and provide appropriate sleep facilities." Employers in the home care industry should pay close attention to further developments in this case, and in the meantime, ensure that they are keeping accurate records of sleep and meal periods for live-in employees.

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