

EMERGENCY REGULATION CONCERNING LIVE-IN CASES LIVES ON

Home Care Alert
January 23, 2018

Today, the Industrial Board of Appeals dismissed a challenge brought by the Chinese Staff and Workers Association and other worker advocacy groups (collectively, the “Petitioner”) against the Commissioner of the New York Department of Labor, wherein the Petitioner sought to invalidate the Emergency Regulation relating to compensation of live-in aides.

As we previously reported, the Emergency Regulation was issued by the New York Department of Labor on October 6, 2017. The Emergency Regulation affirmed that home care providers may exclude from hours worked those hours spent by live-in aides on meal periods and sleep time. The Department of Labor had promulgated the Emergency Regulation in response to the onslaught of wage and hour class action lawsuits that alleged live-in workers were entitled to be paid for all 24 hours of a live-in shift. In view of the current reimbursement structure and the class action lawsuits that were being filed against providers, the Emergency Regulation was critical to preserving the providers’ ability to continue servicing live-in cases.

The New York State Health Care Providers’ Association and the Home Care Association of New York were represented by Hodgson Russ in the proceeding before the Industrial Board of Appeals, and they filed an amicus brief, urging the Board to dismiss the Petitioner’s challenge to the Emergency Regulation.

Home care providers who have questions about this decision or its impact on their live-in cases may contact any member of our Home Care Group.

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