

**Testimony of Senior Advisor Carlos Ortiz
New York City Department of Consumer and Worker Protection**

**Before the Committee on
Civil Service and Labor**

**Hearing on
Introduction 175**

September 6, 2022

Introduction

Good afternoon, Chair De La Rosa, and members of the Committee. My name is Carlos Ortiz, and I am a Senior Advisor with the Department of Consumer and Worker Protection (DCWP). Today, I am joined by DCWP’s Acting Deputy Commissioner for the Office of Labor Policy and Standards, Elizabeth Wagoner, and our colleagues from the Human Resources Administration. Thank you for the opportunity to testify today on Introduction 175, relating to maximum working hours for home care aides.

Home care aides are some of our most essential workers, dedicating their lives to taking care of our loved ones. Approximately 325,000 home care workers in New York City provide vital assistance, comfort, and dignity to the people in their care, while working long hours and performing emotionally and physically difficult labor out of the public view.¹

Existing Municipal Protections for Home Care Aides

Since 2017, DCWP has been the home of the City’s Paid Care Division, a first-in-the-nation initiative to focus on the needs of low-wage paid care workers.² Since then, DCWP has combined outreach, advocacy, and enforcement to uphold and expand the rights of paid care workers in New York City.

Through the Paid Care Division, DCWP has built relationships with paid care advocates and paid care provider organizations to help connect with workers and educate them about their rights. In 2018, this informed our reports, “Making Paid Care Work Visible” and “Lifting up Paid Care Work” that shed light on the experiences of paid care workers in New York City and better standards for their working conditions.³

DCWP has been at the forefront of advocating for enhanced protections for paid care workers. In 2018, in response to a proposed rule, we submitted comments to the New York State Department

¹ NYS Occupational Employment and Wage Statistics (OEWS) program.

² <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=2576392&GUID=632A3331-9DC6-4348-ADB6-AD9FFF5F03A7&Options=ID|Text|&Search=paid+care>

³ <https://www1.nyc.gov/assets/dca/downloads/pdf/workers/Making-Paid-Care-Work-Visible.pdf>;
<https://www1.nyc.gov/assets/dca/downloads/pdf/workers/Lifting-up-Paid-Care-Work.pdf>

of Labor (DOL) advocating for safeguards against wage theft for paid care workers scheduled to work 24-hour shifts.⁴ In 2019, we testified before the Council alongside our sister agency, the City Commission on Human Rights (CCHR), in favor of expanding the City’s Human Rights Law to cover domestic workers. And, during the early months of the pandemic, we worked to update the City’s Paid Safe and Sick Leave Law to allow domestic workers to accrue and use their safe and sick time at the same rate as other workers in New York City.⁵

DCWP has also proactively used its enforcement authority to go after unlawful workplace activity in the paid care industry. In 2017, our team investigated 42 healthcare agencies across the city, who collectively employed more than 50,000 workers, for violations of the City’s Paid Safe and Sick Leave Law.⁶ DCWP uncovered evidence of widespread labor violations by paid care employers and a follow-up joint investigation with the New York State Attorney General’s Office (OAG) resulted in settlements that secured over \$18 million in restitution and mandates to improve compliance with the law.⁷ DCWP also partners with state and federal authorities to identify and investigate complaints relating to labor protections outside of our jurisdiction.

The 24-hour Shifts and 13-hour Rule

Today’s legislation focuses on how certain home care workers are scheduled for their shifts when providing care as home care aides. Currently, the New York State DOL allows for home care aides to be scheduled for 24-hour shifts. For each 24-hour shift, an employer is required to pay the workers for at least 13 hours, if the worker is allowed 3 hours for meal breaks and an 8-hour sleep break, 5 of which must be uninterrupted sleep. If the worker does not receive these sleep and meal breaks, the worker must be compensated for the entirety of the 24-hour shift. Regardless, the industry is structured around the expectation that a worker generally will receive only 13 hours of pay for each 24-hour sleep-in shift.

Our understanding is that many home care patients pay for their care through Medicaid reimbursements. That Medicaid funding is directed to health insurance providers or local municipal agencies. These entities contract with local home care providers to employ the home care workers for the patient. Depending on the needs of the patient, a home care aide could be scheduled for 24-hour “live-in” shifts, for which the aide will typically only be paid for 13 hours of work.

Introduction 175

Introduction 175 would eliminate the practice of scheduling home care aides for 24-hour shifts by prohibiting shifts longer than 12 hours, consecutive 12-hour shifts, or shifts totaling more than

⁴ <https://www1.nyc.gov/assets/dca/downloads/pdf/partners/Advocacy-NYSDOL-24-Hour-Rule-071018.pdf>

⁵ <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=3332139&GUID=9531B93E-8D47-48B6-8516-523D03EC932F&Options=ID|Text|&Search=339>

<https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=4624828&GUID=B01A59B0-49DF-413D-85F1-89A2902C9104&Options=ID|Text|&Search=2032>

⁶ <https://www1.nyc.gov/site/dca/media/pr090518-DCA-Announces-Findings-of-Investigations-42-Home-Care-Agencies.page>

⁷ <https://www1.nyc.gov/office-of-the-mayor/news/764-21/mayor-attorney-general-dept-consumer-worker-protection-18-8-million>

12-hours in a 24-hour period. It would also cap a worker's scheduled hours at 50 hours per week, although an employer could assign two additional hours per day, up to 10 hours per week, due to unforeseen circumstances. The legislation would be enforced by DCWP and by a private right of action.

DCWP believes that workers should be paid for all hours that they work. As we discussed in our 2018 comments to the DOL, the practical realities of paid care make it common for home care workers' sleep and meal periods to be interrupted.⁸ And, certain workers have described that even when they report sleep and meal interruptions, they are routinely not compensated for the full 24-hours because their employers focus on keeping costs down. Many of the workers in this industry also identify as women of color and are immigrants, who have expressed fears of retaliation, or have in fact experienced retaliation, when they report that their rest periods have been interrupted or that they have not been fairly compensated. Working with the State to prohibit 24-hour shifts would help to address these fundamental concerns workers are raising around lack of rest and wage theft, as well as improve care conditions for New Yorkers.

However, prohibiting 24-hour shifts through this legislation could have unintended consequences on patients and workers. As I mentioned earlier, New York State DOL allows one worker to be paid for at least 13 hours of a 24-hour "live-in" shift. In prohibiting 24-hour shifts, this legislation would effectively require home care providers to pay at least two workers to cover an entire day for a home care patient. Unless there was additional funding, this would create added financial liability for home care providers that could result in reduced shifts for workers and reduced care for patients, including continuity of care, outcomes that would make both workers and patients worse off.

Conclusion

I would like to thank the Council for today's hearing and its commitment to addressing workplace issues that impact New York City's home care workers. As I mentioned at the beginning of my testimony, paid care workers are some of the most essential workers in our lives. DCWP and the Administration are committed to continued collaboration with workers, advocates, and policymakers to improve working and care conditions for all New Yorkers.

I look forward to our discussion and any questions you may have.

⁸ Ibid.