



Department of Health

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Governor

HOWARD A. ZUCKER, M.D., J.D.
Commissioner

SALLY DRESLIN, M.S., R.N.
Executive Deputy Commissioner

November 2, 2015

Subject: Official Notice of Home Care Worker Wage Parity Minimum Rate of Total Compensation

Dear Administrator:

The purpose of this letter is to provide all certified home health agencies (CHHAs), long term home health care programs (LTHHCPs) and managed care organizations (MCOs) in Nassau, Suffolk and Westchester counties with an official notice of the required minimum rate of total compensation for home care workers required pursuant to Public Health Law § 3614-c(3)(b)(iv). That provision of law mandates that for the period March 1, 2016 through February 28, 2017 such total compensation must be no less than 115% of the total compensation mandated by New York City's living wage law or; the total compensation mandated by the living wage law of Nassau, Suffolk or Westchester county, based on the location of the episode of care.

- For all periods on or after March 1, 2016, the lesser of (i) the minimum rate home care aide total compensation of \$13.22, consisting of a base wage of at least \$10.00 per hour, and supplemental (benefit) wages of up to \$3.22 per hour or; (ii) the total compensation mandated by the living wage law of Nassau, Suffolk or Westchester county. Overtime is not included in the above rates, and must be paid as required pursuant to State and Federal law.

Included in this notice is a document that further explains what is included in the rates for the upcoming Home Care Worker Wage Parity compliance period. If you have any questions regarding this information, please email to the following address:
HCWorkerParity@health.ny.gov.

Sincerely,

Mark L. Kissinger, Director
Division of Long Term Care
Office of Health Insurance Programs

Enclosure

cc: Jason Helgerson
Valencia Lloyd

Wage Parity 2016 Rates

Nassau, Suffolk and Westchester Counties

For the period of March 1, 2016 through February 28, 2017, the minimum rate home care aide total compensation will be \$13.22, consisting of a base wage of at least \$10.00 per hour, and supplemental (benefit) wages of up to \$3.22 per hour.

Wages	Per hour
Base Wage	\$10.00
Supplemental Wages	\$ 3.22
Total Compensation	\$13.22

Overtime	Per hour
FLSA (<i>1½ times regular rate</i>)	\$15.00 (<i>if regular rate is \$10.00</i>)

Total Compensation may be satisfied entirely through wages, or through a combination of wages and supplemental wages, with the following limitations:

The Base Wage is the minimum amount of the Total Compensation that must be paid directly to workers as regular hourly wages for all hours worked.

Supplemental Wages are the amount of Total Compensation that employers may satisfy indirectly, for example, by providing health insurance required by federal law.

Overtime is required at 1½ times the regular rate of compensation under the Fair Labor Standards Act (FLSA) as well as under the New York State Labor Law's provisions for minimum wage and for domestic workers. The exceptions to this general rule that applied to most employers of home care workers and to certain non-profits prior to 2015 no longer apply to third party employers, such as home care agencies, as a result of the new FLSA overtime rules for home companions already in effect. For more information visit www.dol.gov/whd/homecare.

The Overtime premium pay that employers are required to pay for overtime hours under state and federal minimum wage laws may be used to satisfy the Total Compensation required under the wage parity law. As such, if a worker is being paid \$15 an hour for overtime work, the Total Compensation rate of \$13.22 will be fully satisfied during overtime hours. Nothing more needs to be paid for those overtime hours. See the attached notice regarding overtime pay under Wage Parity.

Notice Regarding Overtime Pay under Wage Parity

This notice is provided to clarify the extent to which overtime pay can be used to satisfy the Total Compensation requirements of the Wage Parity Law. While overtime pay can be used to satisfy the Total Compensation requirement for a given hour of overtime, it cannot be used more generally to also satisfy the Total Compensation requirement for non-overtime hours. Thus, for example, if a worker is paid \$15 for an hour of overtime, payment of that \$15 for that hour can be used to satisfy the Total Compensation rate for that hour. In that example, if the Total Compensation rate is \$14.09, then that requirement to pay or prove \$14.09 is fully satisfied by payment of \$15, for that same hour of overtime. By contrast, however, no part of the \$15 paid for a given hour of overtime can be used to satisfy the Total Compensation rate for all hours, generally, or for non-overtime hours, specifically.

To the extent that FAQ number 7 from May 2014 can be read to say that overtime paid during a given hour of overtime work cannot be used to satisfy the Total Compensation requirement for that hour, FAQ number 7 is superseded by this notice.