

## Home Care Worker Wage Parity Frequently Asked Questions (FAQs) January 2014

This document responds to and clarifies questions raised by the Official Notice of Home Care Worker Wage Parity Minimum Rate of Total Compensation for NYC, Long Island and Westchester counties. These Home Care Worker Wage Parity materials are posted on the Health Commerce System (HCS) and the DOH/MRT web site. In addition, please consult all previously posted materials in conjunction with the following FAQs. If you have any questions regarding this information, please email to the following address: [HCWorkerParity@health.state.ny.us](mailto:HCWorkerParity@health.state.ny.us)

### General Questions

#### **Q1. What is the 2014 rate for New York City and how was it determined?**

A1. \$14.09 will be the new minimum rate of home care aide total compensation for New York City, effective March 1, 2014. That rate was determined according to the statutory methodology for calculating the prevailing rate of total compensation as of January 1, 2011 ("prevailing rate") and was used because the statute requires that the prevailing rate be used for New York City starting in 2014 as long as that rate is higher than the New York City Living Wage Law ("living wage"). Public Health Law § 3614-C at 1(c) 3(a)(ii). In announcing the new rate of \$14.09 on October 31, 2013, the Department identified that at least \$10.00 of that amount had to be paid in base wages, where the remaining balance can be satisfied through additional wages, up to \$1.69 and benefits up to \$2.40.

#### **Q2. How much of that \$14.09 rate must be paid out as wages to home care aides in New York City starting in 2014?**

A2. At least \$10.00 of the \$14.09 must be paid as regular wages for every hour worked, with the balance provided through additional wages and benefits. For employers who do not provide additional wages and benefits, the full \$14.09 must be paid as wages.

#### **Q3. The 2014 rate for New York City includes an "additional wage" amount of \$1.69. What are additional wages and how was the \$1.69 rate calculated?**

A3. The Commissioner identified \$1.69 as the portion of the \$14.09 rate for New York City in 2014 that employers can satisfy through additional wages provided through paid leave accruals and wage differentials. The \$1.69 was calculated based on the paid leave accrual rates and the average hourly wage differential costs under the prevailing collective bargaining agreement in 2011. The paid leave and wage differentials that were used in calculating the \$1.69 additional wage are summarized below, together with the collectively bargained accrual formulas:

- **Annual leave:** accrued at one hour for every 26 worked (up to 2.3 hours per week and 10 days or 120 hours per year)
- **Sick leave:** accrued at one hour for every 26 worked (up to 2.3 hours per week and 10 days or 120 hours per year)
- **Personal day:** accrued at one hour for every 250 worked (up to 8 hours per year)

- **Holidays:** New Year's Day, Martin Luther King Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Day
  - **Paid time off:** when they fall on days that the employees are scheduled to work
  - **Premium pay:** 1.5 times the base, when employees work on any of five holidays designated by the employer for premium pay
- **Live-in work:** an extra \$16.95 per day, or \$1.4125 per hour
- **Weekend work:** an extra \$1.10 per hour
- **Multiple clients:** an extra \$0.50 per hour

To calculate the additional wage of \$1.69, the accrual formulas shown above were used for the three paid leave items, multiplying the accrual rates (1/26 or 1/250) times the hourly rate (\$10). For the remaining items, average hourly rates were calculated based on additional information identifying actual costs and hours, using a weighted average that divided total gross wages paid out for an item by total hours worked by all workers, during 2011 by contractors who were signatories to the prevailing collective bargaining agreement.

**Q4. How can employers satisfy the additional wage requirements?**

- A4. Employers can satisfy the \$1.69 additional wage requirement by: (1) increasing the hourly rate paid for all hours worked, or (2) providing paid time off and wage differentials, or (3) by any combination of the two.

For example, employers can: (1) increase the \$10.00 hourly rate to \$11.69, or (2) provide \$1.69 in paid leave and wage differentials, or (3) provide paid leave and wage differentials worth less than \$1.69 (e.g. \$1.00) with the balance (\$0.69) added to the \$10.00 hourly rate (\$10.69).

**Q5. Can employers satisfy the additional wage requirement by providing a standard package of paid time off and wage differentials?**

- A5. Yes, employers can comply with the additional wage requirement of \$1.69 by providing the package of paid time off and wage differentials that were used in calculating the \$1.69 additional wage rate. See FAQ #3 (above).

**Q6. Can employers satisfy the additional wage requirement by using accrual rates, for paid time off, and averaging wage differentials among all covered workers?**

- A6. Yes, employers can use accrual rates to calculate the value of paid time off, and can use weighted averages to calculate the value of wage differentials. See FAQ #3 (above).

In the end, however, if the value of accrued time off and weighted average wage differentials totals less than \$1.69, employers will have to make up the difference by increasing the hourly base wage of \$10.00. See FAQ #4 (above).

**Q7. How is paid time off handled?**

A7. Paid time off can be used to satisfy the "additional wage" portion of the minimum rate of home care aide total compensation. Accrual rates can be used to calculate the hourly credit. See FAQ WP-2014-3 (above). For example, a policy that allows employees to accrue 10 days of leave per year, at the rate of one hour per 26 hours worked, could be used to satisfy  $\$0.38\frac{1}{2}$  per hour of additional wages:  $\frac{1}{26}$  (accrual rate) x  $\$10.00$  (hourly wage rate) =  $0.003846$  x  $\$10$  =  $\$0.385$ .

**Q8. Do employers have to spend \$14.09 on each employee, or can they spend an average of \$14.09 on all covered employees?**

A8. In general, employers must spend the full \$14.09 on each covered employee. A limited exception applies where employers pay additional wage amounts (differentials) for certain days, hours and assignments that are generally available to any home care aide that works those days, hours or assignments. Since those wage differentials were averaged in calculating the \$1.69 additional wage rate, employers can use same approach in assigning an hourly rate to wage differentials that they provide. See FAQ #3 (above). That approach is limited to wage differentials, since those are the only items where payments to certain employees were averaged over hours worked by all employees.

**Q9. Can employers who are contractually required to make hourly contributions on behalf of every employee claim credit for those amounts during waiting and vesting periods?**

A9. Yes, the employer can claim credit for required contributions that are actually made to plans on behalf of employees who participate in such plans. The fact that the plans have a waiting or vesting period does not preclude the employer from claiming credit for contributions during such waiting period. The result would be different if the employer did not make contributions on behalf of employees during an initial waiting or probationary period, for example, if an employer with a group health insurance policy did not add new employees to that policy until after a probationary period, then there would be not contributions to credit for probationary employees who were not part of the group health insurance policy. See February 2012 FAQ #6.

**Q10. What types of benefits can satisfy the supplement portion of the required total compensation?**

A10. The supplement portion can be satisfied through any type of payment covered by the following statutory definition of the term "total compensation."

*"Total compensation" means all wages and other direct compensation paid to or provided on behalf of the employee including, but not limited to, wages, health, education or pension benefits, supplements in lieu of benefits and compensated time off, except that it does not include employer taxes or employer portion of payments for statutory benefits, including but not limited to FICA, disability insurance, unemployment insurance and workers compensation.*

Public Health Law § 3614-c at 1(b). That definition does not exclude other benefits that employers may choose to provide through employee benefit plans regulated under the Employee Retirement Income Security Act. Nor does it exclude other benefits that employees may choose to obtain through wage deductions permitted under New York State Labor Law § 193. For further information on this topic, see January 2012 FAQ #17 and February 2012 FAQ #5, 18 and 19.