



## Department of Health

ANDREW M. CUOMO  
Governor

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

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

October 31, 2017

**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) managed care organizations (MCOs) and fiscal intermediaries (FIs) in New York City with an official notice of the required minimum rate of total compensation for home care aides pursuant to Public Health Law § 3614-c(3)(a)(iv) and Labor Law § 652.1(a).

While the benefit portion of the minimum rate of total of care aide total compensation remains \$4.09 per hour, the cash portion of the minimum rate of home care aide total compensation will increase according to the state minimum wage phase-in schedule for New York City as follows:

- for “large” employers (those with 11 or more total employees), the cash portion of the minimum rate shall be:
  - \$13.00 per hour beginning December 31, 2017
  - \$15.00 per hour beginning December 31, 2018
- for “small” employers (those with 10 or fewer total employees), the cash portion of the minimum rate shall be:
  - \$12.00 per hour beginning December 31, 2017
  - \$13.50 per hour beginning December 31, 2018
  - \$15.00 per hour beginning December 31, 2019

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 along with changes in the computation of overtime. If you have any questions regarding this information, please email to the following address: [HCWorkerParity@health.ny.gov](mailto:HCWorkerParity@health.ny.gov).

Sincerely,

Andrew Segal, Director  
Division of Long Term Care  
Office of Health Insurance Programs

Enclosure

cc: Jason Helgerson  
Jonathan Bick

**Wage Parity Rates  
after 12/30/17**

New York City

For the period of December 31, 2017 through December 30, 2018, the minimum rate for home care aide total compensation (Total Compensation) will be \$17.09 and \$16.09 for large and small employers, respectively, in New York City.

This consists of a cash portion (Base Wage) of at least the hourly amounts set forth below, and a benefit portion (Additional Wages and Supplemental Wages) of up to \$4.09 per hour (\$1.69 per hour for Additional Wages and up to \$2.40 per hour for Supplemental Wages).

Wages	<u>Large Employers</u>		<u>Small Employers</u>		
	As of 12/31/17	As of 12/31/18	As of 12/31/17	As of 12/31/18	As of 12/31/19
Base Wage	\$13.00	\$15.00	\$12.00	\$13.50	\$15.00
Additional Wages	\$1.69	\$1.69	\$1.69	\$1.69	\$1.69
Supplemental wage	\$2.40	\$2.40	\$2.40	\$2.40	\$2.40
Total Compensation	\$17.09	\$19.09	\$16.09	\$17.59	\$19.09
<b>Overtime</b>					
FLSA ( <i>1½ times regular rate</i> ) (if regular rate equals Base Wage)	\$19.50	\$22.50	\$18.00	\$20.25	\$22.50

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

**The Base Wage** is the minimum amount of the Total Compensation that must be paid in cash wages directly to the home care aide as regular hourly wages for all hours worked.

**Additional Wages** are the amount of the Total Compensation that employers may satisfy through additional payments directly to home care aides for hours not worked and for differentials and premiums other than overtime. Examples include paid leave (vacation, holiday, sick and personal days) and differentials or premiums for certain shifts (nights, weekends and holidays) or assignments (sleep-in or live-in work, care for multiple clients during the same shift). Additional Wages do not include overtime compensation required under the Fair Labor Standards Act (FLSA) or State minimum wage orders or extra compensation creditable toward required overtime compensation for hours worked in excess of normal, regular or maximum daily or weekly hours. The Additional Wage portion can also be satisfied by increasing the Base Wage or Supplemental Wages by a corresponding amount.

**Supplemental Wages** are the amount of Total Compensation that employers may satisfy indirectly, for example, by providing education, pension benefits, or health insurance required by federal law. The Supplemental Wages portion can also be satisfied by increasing the Base Wage by a corresponding amount.

**Overtime** is required at 1½ times the regular rate of compensation under the 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 aides and to certain non-profits prior to 2015 no longer apply to third party employers, such as home care agencies, as a result of FLSA overtime Home Care Final Rule issued on October 1, 2013, amending 29 C.F.R. § 552 at 3, 6, 102, 109 and 110. For more information visit [www.dol.gov/whd/homecare](http://www.dol.gov/whd/homecare).

### 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 home care aide's regular rate is \$11 and they are paid \$16.50 for an hour of overtime, payment of that \$16.50 for that hour can be used to satisfy the Total Compensation rate for that hour. In that example, if the Total Compensation rate is \$15.09, then the requirement to pay or provide \$15.09 is fully satisfied by payment of \$16.50, for that same hour of overtime. By contrast, however, no part of the \$16.50 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.