



Live-In Update **13-Hour Rule Developments**

Earlier this month, the Urban Justice Center petitioned the New York State Industrial Board of Appeals ([IBA](#)), asking it to strike down the Department of Labor's ([DOL](#)) emergency [regulations](#) issued in October. The emergency regulations codified the "13-hour rule" for home care aides that work a shift of 24 hours or more, stating that these aides do not need to be paid for any meal or sleep periods that are excluded from hours worked under the federal Fair Labor Standards Act (FLSA). It is not clear when the IBA will hear and rule on the petition.

Separately, a federal district court denied a plaintiff's motion to certify a class of home care aides who were allegedly not paid for all 24 hours of a 24-hour shift. In *de Carrasco v. Life Care Services, Inc.*, the Southern District of New York agreed with previous district court rulings that DOL's 2010 opinion letter implementing the 13-hour rule was entitled to deference, that it did not conflict with the language of DOL's regulations, and that DOL's interpretation was neither unreasonable nor irrational.

Instead, the court said that the opinion letter expanded on the regulations "by defining what it means to be 'available for work.'" Class certification was denied because the court determined that questions related to meal and sleep breaks are individualized, not common. Thus, a class action lawsuit was not the superior method of adjudicating aides' claims. The court is the first to rely upon DOL's recently issued emergency regulations and statement of intent, which, the court found supported its interpretation of the opinion letter.

The ruling, while consistent with other federal court decisions, is not binding authority for pending state court cases, such as *Tokhtaman*.

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