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NCLEJ, Legal Aid File Article 78 Lawsuit Against NYSDOL On Behalf of Hundreds of 24-Hour Home Care Workers

Petition Seeks Reopening of Years-Long Wage Theft Investigation that was Unlawfully Terminated, Leaving Vulnerable Workers with No Relief in Sight

New York, NY – The National Center for Law and Economic Justice and The Legal Aid Society have filed an [Article 78 Petition](#) with the Supreme Court of the State of New York against the New York State Department of Labor (NYSDOL) on behalf of home care aides who are forced to work 24-hour shifts for only 13 hours of compensation.

The lawsuit seeks to reopen a years-long NYSDOL investigation into the stolen wages of 24-hour home care aides. Despite finding “overwhelmingly corroborative” evidence that home care aides assigned to work 24-hour shifts are systematically subject to wage theft by being forced to work continuously while being paid less than the minimum wage and receiving little to no overtime pay, the NYSDOL suddenly closed hundreds of unpaid wage claims filed by home care aides.

Although no explanation was provided to the aides before their cases were closed, the NYSDOL afterwards justified the closures by pointing to a new “rule” that it would not investigate claims filed by home care aides who are subject to mandatory arbitration agreements. Mandatory arbitration agreements are an increasingly common practice among employers of low-wage workers that has the effect of robbing workers of billions of wages each year.

NYSDOL’s union arbitration rule should be annulled, and all unpaid wage claims should be investigated fully so home care workers can get full restitution for their hours worked.

“NYSDOL has violated the law by instituting an illegitimate rule that prevents homecare workers from getting the unpaid wages they are owed if their union has an existing arbitration agreement in place,” said **Carmela Huang, Senior Attorney at NCLEJ**. “These workers, the majority of whom are women of color and immigrants, were forced to work full 24-hour shifts

for only 13 hours of pay. They are owed tens or hundreds of thousands of dollars each. The amount secured by their union in a recent arbitration agreement, less than 1% of what they are owed, is woefully inadequate given that these workers were subjected to unlawful working conditions that have in some cases led to permanent disability. We demand NYSDOL's illegitimate rule be annulled so that homecare workers can get full restitution of their unpaid wages.”

“Home care workers experienced an unconscionable level of wage theft by being forced to work full 24-hour shifts for only 13 hours of pay,” said **Richard Blum, staff attorney in the Employment Law Unit at The Legal Aid Society**. “NYSDOL should be securing justice for these vulnerable workers – not throwing them under the bus with an arbitrary and illegitimate rule that leaves them shortchanged. We won't sit still when government agencies break the law. Home care workers deserve complete restitution for their unpaid wages, and we will continue to hold NYSDOL accountable until that happens.”

The lawsuit alleges that the NYSDOL violated the New York State Administrative Procedures Act by instituting a rule without following proper procedure which prevents unionized workers from filing claims over unpaid wages against their employer if their union has an arbitration agreement in place. NYSDOL is legally erroneous in its claim that an arbitration agreement supersedes the power of the agency, and the Department's closure of these claims is arbitrary and capricious, targeting an especially vulnerable class of workers (home care workers who are 90% women, 82% people of color and 67% foreign-born) to exclude them from its protections.

BACKGROUND:

This petition is the latest action in a multi-year struggle to secure restitution for home care workers who experience wage theft. New York policy allows these workers to be paid for just 13 hours of each shift, mandating an unpaid eight-hour period for sleep and three hours for meals. However, many aides have long said this practice was impossible, given their patients' round-the-clock needs. In addition to missing out on sleep and adequate pay, these conditions also make home care workers extremely vulnerable to occupational injuries that often lead to permanent disability.

In November 2019, NYSDOL acknowledged that the evidence of wage theft was overwhelmingly corroborative, and that home care workers should have been paid for their full 24 hours of work. NYSDOL stated that it intended to investigate unpaid wage claims.

In February 2022, 1199 SEIU reached an arbitration agreement with home care worker agencies to create a settlement fund that required the agencies to contribute just \$250 per employee – despite workers being owed far greater amounts in unpaid wages.

In October 2022, NCLEJ and partner groups filed a Title VI Federal Civil Rights Complaint against NYSDOL and the New York State Department of Health (NYSDOH) for discrimination against home care workers and consumers on the basis of their race and national origin.

In May 2023, NYSDOL reversed course on investigating unpaid wage claims and adopted the rule preventing workers from filing unpaid wage claims against their employers if their union has an arbitration agreement in place.

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*The **National Center for Law and Economic Justice** is a legal services nonprofit organization that advances racial and economic justice for low-income families, individuals, and communities across the country through ground-breaking impact litigation, policy advocacy, and support for grassroots organizing. Founded in 1965, NCLEJ fights to protect access to critical benefits like food stamps, Medicaid, and childcare, protects low-wage workers' rights and safety, advocates for the rights of people with disabilities, and fights unlawful debt collection.*

***The Legal Aid Society** exists for one simple yet powerful reason: to ensure that New Yorkers are not denied their right to equal justice because of poverty. For over 145 years, they have protected, defended, and advocated for those who have struggled in silence for far too long. Every day, in every borough, The Legal Aid Society changes the lives of their clients and helps improve their communities.*