

Federal Law

Under the Fair Labor Standards Act, employees who are working at least a 24-hour shift do not need to be paid for sleep time up to a total of 8 hours per 24 hours of shift time, provided the employee: (1) is given adequate sleeping accommodations (i.e., a bed, pillow, etc.), (2) can enjoy at least 5 hours of uninterrupted sleep, and (3) has agreed with the employer (through either an express or implied agreement) that sleep time will not be compensated as regular working hours. In the event each of these requirements is met, the employee does not need to be paid for sleep time. However, if the employee's sleep time is interrupted, they must be paid for the time spent working as a result of the interruption. Note - this requirement applies to shifts at least 24 hours in length; if the shift is less than 24 hours, the employee must be paid for the entire shift, including sleep time.

New York State Law

New York has a special "13-hour rule" for home care aides, which requires that employers pay home health aides for a minimum of 13 hours for a 24-hour shift. For an employer to take advantage of this rule, the employee (i) must be given a sleep break of at least 8 hours and receive at least 5 hours of uninterrupted sleep, and (ii) must also receive meal breaks totaling 3 hours, which are not interrupted. If the employee does not receive at least 5 hours of continuous sleep, or the meal breaks are interrupted, the employer must compensate the employee for the entire sleep or meal period. Additionally, if an employee receives at least 5 hours of continuous sleep, but the 8-hour sleep period is interrupted, the employee must be paid for their working time.

You have indicated that the New York State Law is unclear. The 13-hour rule only applies to home care aides, which are defined under the Public Health Law as:

a home health aide, personal care aide, home attendant, personal assistant performing consumer directed personal assistance services ... or other licensed or unlicensed person whose primary responsibility includes the provision of in-home assistance with activities of daily living, instrumental activities of daily living or health-related tasks.

NY PHL § 3614-c(1)(d). Technically, employees at a group residence may not be "home care aides." However, NYSARC employees perform substantially similar services for individuals with intellectual and developmental disabilities, as home care aides perform for the individuals they care for. Our attorneys have previously spoken with the Deputy Counsel for the NYS Department of Labor regarding the applicability of the 13-hour rule to professions other than home care aides. He advised that it is the Department's intent that the protections of the 13-hour rule apply more broadly than just to home care aides and that it would apply to other professions that perform similar duties. In light of those statements, we would hope the Department would apply the 13-hour rule to employees who are working a 24-hour shift and providing services within a residence, such as cooking, feeding, bathing, housework, assisting patients using the bathroom, emotional support, and other household tasks, as are typical of home care aides.