NEW YORK STATE OF OPPORTUNITY. Department of Health

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Governor

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Commissioner

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Executive Deputy Commissioner

December 6, 2017

Managed Care Minimum Wage Guidance

The purpose of this document is to affirm that directives from previously released minimum wage guidance for SFY 2016-17 apply for SFY 2017-18 and reiterate that pursuant to statute, Minimum Wage funding may be utilized only to pay providers to meet their Minimum Wage obligation.

The Department of Health has added increased funding for minimum wage compliance uniformly to MCO regional rates for SFY 2017-18. This funding includes CY2017 and CY2018 minimum wage increases and addresses minimum wage changes in all regions in New York State. Additionally, MCOs have received Schedule F information detailing the projected amount of funding provided for each MCO in each region that the MCO serves. The Department's objective in providing this funding is to ensure that providers have sufficient funding to meet statutory Minimum Wage requirements. Toward that end, the aggregate additional funds paid to MCOs shall be paid out entirely to providers and subsequently to workers for appropriate statutory wage obligations (including the direct salary costs and related fringe benefits of minimum wage and wage parity amounts).

MCOs and providers are directed to finalize contract amendments at least one week prior to the effective date of December 31, 2017. To ensure that the deadline for contract agreements is met, the Division of Long Term Care (DLTC) is issuing weekly MCO surveys to track the progress of contract development between MCOs and providers.

MCOs and providers are encouraged to commence contract negotiations as soon as possible. Delaying these discussions will disrupt successful implementation of the Minimum Wage and potentially the delivery of services. Furthermore, as stated in previous guidance, the Department is committed to collecting minimum wage data to reconcile minimum wage funding amounts in rates. The intent is to reconcile any excess or deficiency in funding for minimum wage in a subsequent fiscal year rate cycle based upon MCO cost report data submissions.

All submissions and questions should be directed to HCWorkerParity@health.ny.gov.

KeyCite Yellow Flag - Negative Treatment
Unconstitutional or PreemptedPrior Version Preempted by Concerned Home Care Providers, Inc. v. Cuomo, N.D.N.Y., Sep. 25, 2013
KeyCite Yellow Flag - Negative TreatmentProposed Legislation

McKinney's Consolidated Laws of New York Annotated
Public Health Law (Refs & Annos)
Chapter 45. Of the Consolidated Laws (Refs & Annos)
Article 36. Home Care Services (Refs & Annos)

McKinney's Public Health Law § 3614-c

§ 3614-c. Home care worker wage parity

Effective: July 1, 2017

Currentness

1. As used in this section, the following terms shall have the following meaning:

(a) "Living wage law" means any law enacted by Nassau, Suffolk or Westchester county or a city with a population of one million or more which establishes a minimum wage for some or all employees who perform work on contracts with such county or city.

(b) "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.

(c) "Prevailing rate of total compensation" means the average hourly amount of total compensation paid to all home care aides covered by whatever collectively bargained agreement covers the greatest number of home care aides in a city with a population of one million or more. For purposes of this definition, any set of collectively bargained agreements in such city with substantially the same terms and conditions relating to total compensation shall be considered as a single collectively bargained agreement.

(d) "Home care aide" means a home health aide, personal care aide, home attendant, personal assistant performing consumer directed personal assistance services pursuant to section three hundred sixty-five-f of the social services law, 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; provided, however, that home care aide does not include any individual (i) working on a casual basis, or (ii) (except for a person employed under the consumer directed personal assistance program under section three hundred sixty-five-f of the social services law) who is a relative through blood, marriage or adoption of: (1) the employer; or (2) the person for whom the worker is delivering services, under a program funded or administered by federal, state or local government.

(e) “Managed care plan” means any managed care program, organization or demonstration covering personal care or home health aide services, and which receives premiums funded, in whole or in part, by the New York state medical assistance program, including but not limited to all Medicaid managed care, Medicaid managed long term care, Medicaid advantage, and Medicaid advantage plus plans and all programs of all-inclusive care for the elderly.

(f) “Episode of care” means any service unit reimbursed, in whole or in part, by the New York state medical assistance program, whether through direct reimbursement or covered by a premium payment, and which covers, in whole or in part, any service provided by a home care aide, including but not limited to all service units defined as visits, hours, days, months or episodes.

(g) “Cash portion of the minimum rate of home care aide total compensation” means the minimum amount of home care aide total compensation that may be paid in cash wages, as determined by the department in consultation with the department of labor.

(h) “Benefit portion of the minimum rate of home care aide total compensation” means the portion of home care aide total compensation that may be paid in cash or health, education or pension benefits, wage differentials, supplements in lieu of benefits and compensated time off, as determined by the department in consultation with the department of labor. Cash wages paid pursuant to increases in the state or federal minimum wage cannot be used to satisfy the benefit portion of the minimum rate of home care aide total compensation.

2. Notwithstanding any inconsistent provision of law, rule or regulation, no payments by government agencies shall be made to certified home health agencies, long term home health care programs, managed care plans, or the consumer directed personal assistance program under section three hundred sixty-five-f of the social services law, for any episode of care furnished, in whole or in part, by any home care aide who is compensated at amounts less than the applicable minimum rate of home care aide total compensation established pursuant to this section.

3. (a) The minimum rate of home care aide total compensation in a city with a population of one million or more shall be:

(i) for the period March first, two thousand twelve through February twenty-eighth, two thousand thirteen, ninety percent of the total compensation mandated by the living wage law of such city;

(ii) for the period March first, two thousand thirteen through February twenty-eighth, two thousand fourteen, ninety-five percent of the total compensation mandated by the living wage law of such city;

(iii) for the period March first, two thousand fourteen through March thirty-first two thousand sixteen, no less than the prevailing rate of total compensation as of January first, two thousand eleven, or the total compensation mandated by the

living wage law of such city, whichever is greater;

(iv) for all periods on or after April first, two thousand sixteen, the cash portion of the minimum rate of home care aide total compensation shall be ten dollars or the minimum wage as laid out in paragraph (a) of subdivision one of section six hundred fifty-two of the labor law, whichever is higher. The benefit portion of the minimum rate of home care aide total compensation shall be four dollars and nine cents.

(b) The minimum rate of home care aide total compensation in the counties of Nassau, Suffolk and Westchester shall be:

(i) for the period March first, two thousand thirteen through February twenty-eighth, two thousand fourteen, ninety percent of the total compensation mandated by the living wage law as set on March first, two thousand thirteen of a city with a population of a million or more;

(ii) for the period March first, two thousand fourteen through February twenty-eighth, two thousand fifteen, ninety-five percent of the total compensation mandated by the living wage law as set on March first, two thousand fourteen of a city with a population of a million or more;

(iii) for the period March first, two thousand fifteen, through February twenty-eighth, two thousand sixteen, one hundred percent of the total compensation mandated by the living wage law as set on March first, two thousand fifteen of a city with a population of a million or more;

(iv) for all periods on or after March first, two thousand sixteen, the cash portion of the minimum rate of home care aide total compensation shall be ten dollars or the minimum wage as laid out in paragraph (b) of subdivision one of section six hundred fifty-two of the labor law, whichever is higher. The benefit portion of the minimum rate of home care aide total compensation shall be three dollars and twenty-two cents.

4. The terms of this section shall apply equally to services provided by home care aides who work on episodes of care as direct employees of certified home health agencies, long term home health care programs, or managed care plans, or as employees of licensed home care services agencies, limited licensed home care services agencies, or the consumer directed personal assistance program under section three hundred sixty-five-f of the social services law, or under any other arrangement.

5. No payments by government agencies shall be made to certified home health agencies, long term home health care programs, managed care plans, or the consumer directed personal assistance program under section three hundred sixty-five-f of the social services law, for any episode of care without the certified home health agency, long term home health care program, managed care plan or the consumer directed personal assistance program having delivered prior written certification to the commissioner, on forms prepared by the department in consultation with the department of labor, that all services provided under each episode of care are in full compliance with the terms of this section and any regulations promulgated pursuant to this section.

6. If a certified home health agency or long term home health care program elects to provide home care aide services through contracts with licensed home care services agencies or through other third parties, provided that the episode of care on which the home care aide works is covered under the terms of this section, the certified home health agency, long term home health care program, or managed care plan must obtain a written certification from the licensed home care services agency or other third party, on forms prepared by the department in consultation with the department of labor, which attests to the licensed home care services agency's or other third party's compliance with the terms of this section. Such certifications shall also obligate the certified home health agency, long term home health care program, or managed care plan to obtain, on no less than a quarterly basis, all information from the licensed home care services agency, fiscal intermediary or other third parties necessary to verify compliance with the terms of this section. Such certifications and the information exchanged pursuant to them shall be retained by all certified home health agencies, long term home health care programs, or managed care plans, and all licensed home care services agencies, or other third parties for a period of no less than ten years, and made available to the department upon request.

7. The commissioner shall distribute to all certified home health agencies, long term home health care programs, managed care plans, and fiscal intermediaries in the consumer directed personal assistance program under section three hundred sixty-five-f of the social services law, official notice of the minimum rates of home care aide compensation at least one hundred twenty days prior to the effective date of each minimum rate for each social services district covered by the terms of this section.

8. The commissioner is authorized to promulgate regulations, and may promulgate emergency regulations, to implement the provisions of this section.

9. Nothing in this section should be construed as applicable to any service provided by certified home health agencies, long term home health care programs, managed care plans, or consumer directed personal assistance program under section three hundred sixty-five-f of the social services law except for all episodes of care reimbursed in whole or in part by the New York Medicaid program.

10. No certified home health agency, managed care plan, long term home health care program, or fiscal intermediary in the consumer directed personal assistance program under section three hundred sixty-five-f of the social services law shall be liable for recoupment of payments for services provided through a licensed home care services agency or other third party with which the certified home health agency, long term home health care program, or managed care plan has a contract because the licensed agency or other third party failed to comply with the provisions of this section if the certified home health agency, long term home health care program, managed care plan, or fiscal intermediary has reasonably and in good faith collected certifications and all information required pursuant to subdivisions five and six of this section.

Credits

(Added L.2011, c. 59, pt. H, § 33, eff. March 31, 2011, deemed eff. April 1, 2011. Amended L.2016, c. 56, § 1, eff. April 4, 2016; L.2016, c. 73, pt. E, §§ 1, 2, eff. June 23, 2016, deemed eff. April 4, 2016; L.2017, c. 57, pt. S, § 5, eff. July 1, 2017.)

Notes of Decisions (20)

McKinney's Public Health Law § 3614-c, NY PUB HEALTH § 3614-c
Current through L.2017, chapters 1 to 505.

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149 A.D.3d 476
Supreme Court, Appellate Division, First Department, New York.

Nina TOKHTAMAN, etc., Plaintiff–Respondent,
v.
HUMAN CARE, LLC, Defendant–Appellant,
County Agency, Inc., et al., etc., Defendants.

April 11, 2017.

Synopsis
Background: Home health care attendant brought action against employer seeking to recover wages and benefits under New York labor laws and asserting breach of contract claim. The Supreme Court, New York County, Carol R. Edmead, J., 2016 WL 4439990, denied employer's motion to dismiss complaint. Employer appealed.

Holdings: The Supreme Court, Appellate Division, held that:

[1] attendant stated minimum wage, overtime, and failure to pay wages claims, and

[2] attendant had standing to sue employer as third-party beneficiary for breach of contract.

Affirmed.

West Headnotes (3)

[1] **Labor and Employment**
Particular exemptions in general

Home health care attendant sufficiently alleged that she did not fall within category of residential employees who need only be paid for 13 hours of every 24-hour shift, and, thus, attendant stated minimum wage, overtime, and failure to pay wages claims under New York labor laws against her employer, where attendant alleged that she maintained her own residence, and did not "live in" homes of her employer's clients, despite admitting that she generally worked approximately 168 hours per week, i.e., 24 hours a day, 7 days a week. 12 NYCRR 142–2.1(b)(1, 2).

3 Cases that cite this headnote

[2] **Administrative Law and Procedure**
Administrative construction

The courts are not required to embrace an agency's regulatory construction that conflicts with the plain meaning of the promulgated language or that is irrational or unreasonable.

2 Cases that cite this headnote

[3] **Health**
Membership or affiliation with organization; contractual relationship

Home health care attendant's breach of contract allegations gave sufficient notice of nature of claim, and, thus, attendant had standing to sue employer as third-party beneficiary for breach of alleged contracts requiring employer to pay attendant certain wages pursuant to public health law governing home care worker wage parity, even though attendant did not specifically identify subject contracts or government agencies at issue, since attendant's citation to applicable public health law made clear that contracts referenced were those required for every company providing health care services that sought reimbursement from Medicaid or Medicare. McKinney's Public Health Law § 3614–c.

Cases that cite this headnote

Attorneys and Law Firms

****90** Cohen, Labarbera & Landrigan, LLP, Goshen (Joshua A. Scerbo of counsel), for appellant.

Virginia & Ambinder, LLP, New York (Ladonna M. Lusher of counsel), for respondent.

SWEENY, J.P., ANDRIAS, MOSKOWITZ, KAHN, GESMER, JJ.

Opinion

***476** Order, Supreme Court, New York County (Carol R. Edmead, J.), entered August 23, 2016, which denied defendant Human Care, LLC's motion to dismiss the complaint, unanimously affirmed, without costs.

[1] Defendants are not entitled to dismissal of the minimum wage, overtime, and failure to pay wages claims. The merit of these claims depends on whether plaintiff, who was employed by defendants as a home health care attendant, falls within the category of employees who need only be paid for 13 hours of every 24–hour shift. We find that plaintiff has sufficiently alleged that she does not fall within that category.

Department of Labor Regulations (12 NYCRR) § 142–2.1(b) provides that the minimum wage must be paid for each hour ****91** an employee is "required to be available for work at a place prescribed by the employer," except that a "residential employee—one who lives on the premises of the employer" need not be paid "during his or her normal sleeping hours solely because he is required to be on call" or "at any other time when he or she is free to leave the place of employment" (12 NYCRR 142–2.1[b][1], [2]). A March 11, 2010 Department of Labor (DOL) ***477** opinion letter provides further guidance regarding this regulation, advising that "live-in employees," whether or not they are " residential employees," "must be paid not less than for thirteen hours per twenty-four hour period provided that they are afforded at least eight hours for sleep and actually receive five hours of uninterrupted sleep, and that they are afforded three hours for meals" (N.Y. St. Dept. of Labor, Op. No. RO–09–0169 at 4 [Mar. 11, 2010]).

[2] "[C]ourts are not required to embrace a regulatory construction that conflicts with the plain meaning of the promulgated language" (*Matter of Visiting Nurse Serv. of N.Y. Home Care v. New York State Dept. of Health*, 5 N.Y.3d 499, 506, 806 N.Y.S.2d 465, 840 N.E.2d 577 [2005]), or that is "irrational or unreasonable" (*Samiento v. World Yacht Inc.*, 10 N.Y.3d 70, 79, 854 N.Y.S.2d 83, 883 N.E.2d 990 [2008] [internal quotation marks omitted]).

We find that the DOL opinion conflicts with 12 NYCRR 142–2.1(b) insofar as the opinion fails to distinguish between "residential" and "nonresidential" employees, and should thus not be followed in this respect (*see Lai Chan v. Chinese–American Planning Council Home Attendant Program, Inc.*, 50 Misc.3d 201, 213–216, 21 N.Y.S.3d 814 [Sup.Ct., N.Y. County 2015]; *Andryeyeva v. New York Health Care, Inc.*, 45 Misc.3d 820, 826–833, 994 N.Y.S.2d 278 [Sup.Ct., Kings County 2014]; *see also Kodirov v. Community Home Care Referral Serv., Inc.*, 35 Misc.3d 1221[A], 2012 N.Y. Slip Op. 50808[U], *2, 2012 WL 1605258 [Sup.Ct., Kings County 2012]). As such, if plaintiff can demonstrate that she is a nonresidential employee, she may recover unpaid wages for the hours worked in excess of 13 hours a day.

Plaintiff alleges that she "maintained her own residence, and did not 'live in' the homes of Defendants' clients." Although plaintiff admitted that she "generally worked approximately 168 hours per week" (or 24 hours a day, 7 days a week), it cannot be said at this early stage, prior to any discovery, that she lived on her employers' premises as a matter of law.

Because the viability of plaintiff's "spread of hours" claim (*see* Department of Labor Regulations [12 NYCRR] § 142–2.4[a]) likewise turns on whether plaintiff is entitled to be paid for the full 24 hours worked or only 13 of those hours, the motion court correctly denied the motion to dismiss as to that claim.

[3] Defendants are not entitled to dismissal of the breach of contract claim. Plaintiff has standing to sue as a third-party beneficiary of the alleged contracts requiring defendants to pay plaintiff certain wages pursuant to Public Health Law § 3614–c (*see Cox v. NAP Constr. Co., Inc.*, 10 N.Y.3d 592, 601–603, 861 N.Y.S.2d 238, 891 N.E.2d 271 [2008]; ***478** *Moreno v. Future Care Health Servs., Inc.*, 43 Misc.3d 1202[A], 2014 N.Y. Slip Op. 50449[U], *23–25, 2014 WL 1236815 [Sup.Ct., Kings County 2014]). The breach of contract allegations give sufficient notice of the nature of the claim (*JP Morgan Chase v. J.H. Elec. of N.Y., Inc.*, 69 A.D.3d 802, 803, 893 N.Y.S.2d 237 [2d Dept.2010]; *see also Second Source Funding, LLC v. Yellowstone Capital, LLC*, 144 A.D.3d 445, 446, 40 N.Y.S.3d 410 [1st Dept.2016]). Although the complaint does not specifically ****92** identify the contracts or government agencies at issue, its citation to Public Health Law § 3614–c makes clear that the contracts referenced are those required for every company providing health care services that seek reimbursement from Medicaid or Medicare (*see* Public Health Law § 3614–c; *Matter of Concerned Home Care Providers, Inc. v. State of New York*, 108 A.D.3d 151, 153–154, 969

N.Y.S.2d 210 [3d Dept.2013], *appeal dismissed* 22 N.Y.3d 946, 977 N.Y.S.2d 175, 999 N.E.2d 538 [2013], *lv. denied* 22 N.Y.3d 859, 2014 WL 113701 [2014]; *Moreno*, 43 Misc.3d 1202[A], 2014 N.Y. Slip Op. 50449[U], *23–25, 2014 WL 1236815).

All Citations

149 A.D.3d 476, 52 N.Y.S.3d 89, 2017 Wage & Hour Cas.2d (BNA) 118,000, 2017 N.Y. Slip Op. 02759

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153 A.D.3d 1254
Supreme Court, Appellate Division, Second Department, New York.

Adriana MORENO, individually and on behalf of all others similarly situated, et al., appellants,
v.
FUTURE CARE HEALTH SERVICES, INC., et al., respondents.

Sept. 13, 2017.

Synopsis
Background: Employees, who were home health care attendants, brought putative class action against employer alleging that they were paid flat rate for their 24–hour shifts, resulting in wage that was below minimum wage in violation of labor law. The Supreme Court, Kings County, Schmidt, J., 2015 WL 1969753, denied employees' motion for class certification, and after reargument, Knipel, J., adhered to that determination. Employees appealed.

Holding: The Supreme Court, Appellate Division, Second Department held that certification was warranted.

Reversed.

West Headnotes (1)

[1] Parties
Employees

Certification of class of home health care attendants who had worked 24-hour shifts and been paid flat daily rate instead of minimum wage for each hour of shift was warranted; proposed class satisfied prerequisites to class certification, including numerosity, commonality, and typicality, given that, to extent members of proposed class were not "residential" employees within meaning of minimum hourly wage rate and allowances regulation, they were entitled to be paid minimum wage for all 24 hours of their shifts, regardless of whether they were afforded opportunities for sleep and meals, precluding necessity of any fact-intensive individualized inquiry. 12 NYCRR 142–2.1(b); McKinney's CPLR 901(a).

1 Cases that cite this headnote

Attorneys and Law Firms

****590** Getman & Sweeney, PLLC, New Paltz, NY (Michael J.D. Sweeney and Artemio Guerra of counsel), Abbey Spanier, LLP, New York, NY (Judith L. Spanier and Nancy Kaboolian of counsel), and National Employment Law Project, New York, NY (Catherine Ruckelshaus and Sarah Leberstein of counsel), for appellants (one brief filed).

Peckar & Abramson, P.C., New York, NY (Aaron C. Schlesinger and Alexander X. Saunders of counsel), for respondents.

RUTH C. BALKIN, J.P., L. PRISCILLA HALL, HECTOR D. LaSALLE, and BETSY BARROS, JJ.

Opinion

***1254** In a putative class action, inter alia, to recover damages for violations of Labor Law article 19, the plaintiffs appeal (1) from an order of the Supreme Court, Kings County (Schmidt, J.), dated April 24, 2015, which denied their motion for class certification pursuant to CPLR article 9, and (2), as limited by their brief, from so much of an order of the same court (Knipel, J.) dated October 27, 2015, as, upon reargument, adhered to the original determination in the order dated April 24, 2015.

ORDERED that the appeal from the order dated April 24, 2015, is dismissed, as that order was superseded by the order dated October 27, 2015, made upon reargument; and it is further,

***1255** ORDERED that the order dated October 27, 2015, is reversed insofar as appealed from, on the law and in the exercise of discretion, upon reargument, the order dated April 24, 2015, is vacated, and the plaintiffs' motion for class certification pursuant to CPLR article 9 is granted; and it is further,

ORDERED that one bill of costs is awarded to the plaintiffs.

The plaintiffs were employed by the defendant Future Care Health Services, Inc. (hereinafter Future Care), as home health care attendants for Future Care's disabled and elderly clients. The plaintiffs worked a number of 24–hour shifts for Future Care for which they were paid flat rates of $115 to $125 per shift, and they allegedly did not "live-in" the homes of Future Care's clients. The plaintiffs commenced this action, alleging that Future Care's ****591** practice of paying them a flat rate for their 24–hour shifts resulted in a wage that was below the minimum wage in violation of the Labor Law.

The plaintiffs moved to certify a class of home health care attendants who had worked 24–hour shifts for Future Care after February 6, 2007, and had been paid a flat daily rate instead of the minimum wage for each hour of the shift. The Supreme Court denied the motion. Relying on an opinion letter issued by the New York State Department of Labor (hereinafter DOL) on March 11, 2010, the court concluded that Future Care was not required to pay the plaintiffs for each hour of a 24–hour shift, but was permitted to exclude 8 hours of sleep time and 3 hours of meal time from the plaintiffs' wages, so long as that time was actually afforded. Based on its interpretation of the opinion letter, the court concluded that the plaintiffs had failed to establish the numerosity, commonality, and typicality requirements for class certification because a fact-intensive individualized inquiry would be required for each putative class member to determine whether each putative class member was actually afforded 8 hours of sleep time and 3 hours of meal time during each 24–hour shift. Upon reargument, the court adhered to its original determination.

To the extent that the DOL's opinion letter fails to distinguish between "residential" and nonresidential employees, it conflicts with the plain meaning of 12 NYCRR 142–2.1(b), and should not be followed (*see Andryeyeva v. New York Health Care, Inc.*, 153 A.D.3d 1216, 1219, 61 N.Y.S.3d 280 [decided herewith]; *Tokhtaman v. Human Care, LLC*, 149 A.D.3d 476, 477, 52 N.Y.S.3d 89). To the extent that the members of the proposed class were not "residential" employees who "live[d]" on the premises of their employer, they were entitled to be paid the minimum wage for all 24 hours of their shifts, regardless of whether they ***1256** were afforded opportunities for sleep and meals (12 NYCRR 142–2.1[b]; *see Andryeyeva v. New York Health Care, Inc.*, 153 A.D.3d at 1219, 61 N.Y.S.3d 280 [decided herewith]; *see generally Yaniveth R. v. LTD Realty Co.*, 27 N.Y.3d 186, 192–193, 32 N.Y.S.3d 10, 51 N.E.3d 521; *Matter of Settlement Home Care v. Industrial Bd. of Appeals of Dept. of Labor of State of N.Y.*, 151 A.D.2d 580, 581–582, 542 N.Y.S.2d 346).

The plaintiffs established the existence of the five prerequisites to class certification (*see* CPLR 901[a]; *City of New York v. Maul*, 14 N.Y.3d 499, 508, 514, 903 N.Y.S.2d 304, 929 N.E.2d 366), and none of the factors listed in CPLR 902 warranted a denial of the motion for class certification (*see Jiannaras v. Alfant*, 124 A.D.3d 582, 584, 1 N.Y.S.3d 332, *affd.* 27 N.Y.3d 349, 33 N.Y.S.3d 140, 52 N.E.3d 1166; *Dowd v. Alliance Mtge. Co.*, 74 A.D.3d 867, 869, 903 N.Y.S.2d 104; *Argento v. Wal–Mart Stores, Inc.*, 66 A.D.3d 930, 934, 888 N.Y.S.2d 117). Accordingly, upon reargument, the Supreme Court should have vacated its original determination and granted the plaintiffs' motion for class certification (*see Andryeyeva v. New York Health Care, Inc.*, 153 A.D.3d at 1218–19, 61 N.Y.S.3d 280 [decided herewith]).

All Citations

153 A.D.3d 1254, 61 N.Y.S.3d 589, 2017 N.Y. Slip Op. 06439

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