

Home Care Worker Wage Parity Frequently Asked Questions (FAQs) May 2014

This document responds to and clarifies questions raised by the implementation of the 2014 Worker Parity period for NYC, Long Island and Westchester counties. The Home Care Worker Wage Parity materials are posted on the Health Commerce System (HCS) and the DOH/MRT web site. In addition, please consult all previously posted materials in conjunction with the following FAQs. If you have any questions regarding this information, please email to the following address: HCWorkerParity@health.state.ny.us

Questions about Additional Wages

- Q1. The January 2014 FAQ (at #3) explained that the additional wages were calculated based on the accrual of various types of paid leave and holidays, which add up to 28 days a year: 10 annual days, 10 sick days, 1 personal day, 7 holidays. Instead of having an hourly accrual system, can an employer simply provide 28 paid days off to each Home Care Worker, and still remain in compliance with the regulation?**
- A1. Yes. As the January 2014 FAQ (at #4-8) explained, the additional wages do not have to be paid in the same manner that they were determined. An employer could comply with the additional wages requirement by providing 28 paid days off per year.
- Q2. Can the "additional wages" (\$1.69) portion of Total Compensation be satisfied through payments to a benefit fund?**
- A2. Yes. While direct payments to employees were used in determining the additional wages rate of \$1.69, and were cited in the various examples contained in the January 2014 FAQ and in the original October 31, 2013, determination, compliance is not limited to such direct payments. Indirect payments, made to funds for the benefit of employees, can also be used to comply with the additional wages requirement. For example, an employer could use a benefit fund to administer and provide employees with paid leave.
- Q3. Can "additional wages" be combined with "supplemental wages" to increase the maximum amount of benefits above the \$2.40 supplement wage rate?**
- A3. Yes. The "additional wages" requirement can be satisfied by direct wage payments, by benefit contributions, or by any combination of the two. Using part of the "additional wages" to make contributions for benefits has the effect of increasing the maximum benefit credit above the \$2.40 "supplemental wage" rate. In the end, the only portion of the Total Compensation that cannot be used for benefit contributions is the \$10.00 per hour base wage rate.
- Q4. The January 2014 FAQ (at #9), explained that employers who are contractually required to make contributions on behalf of every employee can claim credit for those contributions during waiting and vesting periods. What about similar situations where the levels of benefits increase in type and amount based on the hours worked, and contributions made by or on behalf of each employee: can employers still claim credit for the amounts they actually contribute?**

A4. Yes. Employers can claim credit for the amounts that they actually contribute on behalf of workers to satisfy the supplemental (and additional) wage portion(s). The fact that there is a relationship between the levels of contributions made by or on behalf of employees and the types and amounts of benefits they receive does not raise a compliance issue under the wage parity law. Issues regarding compliance with various federal benefit laws are beyond the scope of this FAQ and must be addressed to the appropriate units of the United States Department of Labor and the Internal Revenue Service.

Q5. Under New York City's Earned Sick Time Act, certain employers must give their employees sick leave as of April 1, 2014. Will employers still be allowed to offer paid time off to satisfy the additional wages component of the worker parity requirement? What will the impact be on employers in NYC that must also comply with the Earned Sick Time Act?

A5. Yes, employers who provide sick leave can claim credit for that under the New York State Wage Parity Law. That does not change when employers become subject to the New York City Earned Sick Time Act.

Q6. If paid time off is provided to the worker to satisfy the \$1.69 additional wage requirement, can an employer impose limits on how much paid time off an employee can roll-over from year to year?

A6. Yes. As long as paid time off is actually provided, employers can limit how much time can roll-over from year to year. Note that, as with all such policies, prior notice must be given to employees in writing or by public posting, pursuant to Labor Law § 195.

Q7. Can premium pay that employers are required to pay for overtime hours under state and federal minimum wage laws be used to satisfy any portion of the Total Compensation required under the wage parity law? In other words, will the Total Compensation rate of \$14.09 fully satisfied during overtime hours in 2015, when the overtime rate will be \$15.00 for workers who are paid \$10.00 during non-overtime hours?

A7. No. Overtime was not included in the Total Compensation rate of \$14.09, or its components, as explained in the October 31, 2013, official notice of rates. That notice further explained that "Additional wages do not include overtime compensation required under 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." As a result, any additional premium paid for overtime hours, above and beyond the regular "straight-time" rate paid for all hours, can not be used to satisfy the Total Compensation rate of \$14.09.