

Conn. Caregivers Say Agency Owes OT For Interrupted Breaks

By **Brian Steele**

Law360 (January 3, 2023, 5:46 PM EST) -- Two live-in personal caregivers in Connecticut have filed a class and collective action against a home care agency that once employed them, alleging that they were not paid overtime when clients required them to wake up and spring into action during overnight hours.

Your Family Home Care LLC did not accurately account for employees' interrupted sleep or meal breaks and withheld significant amounts of money from more than 100 caregivers, according to the lawsuit filed on Dec. 30 in Connecticut federal court.

"Defendants have actual and constructive knowledge that their live-in caregivers work during their meal breaks and sleep times," the lawsuit alleges. "As a result, defendants kept hundreds of thousands of dollars in wages that it should have paid to plaintiffs and the class and collectives, all in violation of state and federal wage and hour laws."

Plaintiffs Nnyana Masoloko and Kefilwe Lekuntwane are suing on behalf of all live-in caregivers who worked for the agency since June 2019. They want the court to award back overtime wages, extra damages and an unspecified amount in penalties under state employment law.

The lawsuit filed under the Fair Labor Standards Act and the Connecticut Minimum Wage Act names Your Family Home Care, based in Vernon, and its principals as defendants.

Under federal law, live-in caregivers are entitled to at least five hours of sleep per night, according to the plaintiffs. Citing the Code of Federal Regulations, they say that if an employee does not get a full five hours of sleep, they should be paid for the entire five hours.

"Defendants' live-in caregivers are frequently interrupted during the night to help defendants' clients use the restroom or turn them over in bed to prevent bedsores," the lawsuit says, and caregivers "routinely fail to get five hours of uninterrupted sleep time because of these frequent interruptions."

Federal law allows the employer of a live-in worker to exclude up to eight hours of sleep "and other periods of complete freedom from all duties" from their pay if both parties agree, the lawsuit says, and Connecticut requires that the agreement be made in writing. The plaintiffs said they made no such written agreements.

Masoloko worked as a live-in caregiver for Your Family Home Care for 18 months until April 2022, according to the lawsuit, while Lekuntwane left her position in February 2022 after

about two years.

In one week in 2021, the lawsuit says, Lekuntwane was paid a day rate of \$194 for all seven days. The lawsuit says the agency failed to add the value of food and lodging to her wages before calculating overtime, and did not credit her with enough hours, so she was underpaid for the week by about \$400.

Hartford attorney Nitor V. Egbarin represents the plaintiffs in the lawsuit, which substantially mirrors several others he brought in recent years against home care employment companies in the state, including Fairfield Healthcare Services, ComForCare Home Care and Liberty Homecare Options.

"I believe it's not just Connecticut. It's all across the country," Egbarin told Law360. "This is a nationwide problem where you have an aging population who need assistance with daily living."

A case Egbarin filed against Help at Home CT, Alzheimer's and Dementia Care LLC and Homecare Connections is ongoing. In June 2022, a federal judge in the Liberty case, in which Lekuntwane is the lead plaintiff, certified a class of all personal care attendants who worked for the agency in the prior three years.

A representative of Your Family Home Care declined to comment.

The proposed class is represented by Nitor V. Egbarin of the Law Office of Nitor V. Egbarin LLC.

Counsel information for the defendants was not immediately available.

The case is Masoloko et al v. Your Family Home Care LLC et al, case number 3:22-cv-01658, in the U.S. District Court for the District of Connecticut.

--Editing by Alex Hubbard.