

## **1199SEIU United Healthcare Workers East Home Care Wage & Hour Arbitration FAQ**

### **(1) What is the 1199SEIU Home Care Wage and Hour Arbitration?**

In 2019, 1199 filed a class action grievance against forty-two home care agencies on behalf of current and former bargaining unit members represented by 1199. The grievance alleged that employers violated their CBAs and state and federal wage and hour laws, including by not always paying for interruptions to sleep and meal times on 24-hour cases, not paying overtime under federal law between January 2015 and October 2015, and not paying travel time prior to 2015. Under the CBA, the grievance proceeded to mediation and then arbitration. Pursuant to the CBA, the Arbitrator must apply applicable state and federal law.

### **(2) Why weren't these claims brought in state or federal court?**

In 2015, 1199 home care workers negotiated a unique provision in the home care collective bargaining agreements providing for the efficient resolution of wage and hour claims with all of the protections and remedies that would be available to them in federal court. Unlike non-union workers who are forced to enter into one-sided arbitration agreements, this negotiated provision provided a way for 1199 home care workers to protect all of their statutory rights without having to pay a private attorney.

### **(3) What did the Arbitrator award?**

In February 2022, the Arbitrator issued an Award finding that all forty-two employers had violated various laws to some extent and provided for the creation of a Special Wage Fund to be funded by the employers in the approximate amount of \$30,000,000.

### **(4) How is the Special Wage Fund created?**

Pursuant to the February 2022 Award, each Respondent Employer must fund the Special Wage Fund in the amount of \$250 per each individual employee who was on the Employer's payroll at any time between the beginning of the statute of limitations period (in most cases January 2, 2013) and October 31, 2021, regardless of whether the individual worker has a claim. The amount per Employer is solely based on the number of actual employees on the payroll during the relevant period and is not determined by the number of 1199SEIU workers who worked on 24-hour cases, worked overtime, or worked any other particular type of hour. For example, if an Employer employed 5,000 individual employees between January 2, 2013 and October 31, 2021, the Employer would be obligated to Fund the Special Wage Fund in the amount of \$1,250,000. If an employee worked for multiple agencies, each agency will make a \$250 per capita contribution on behalf of that employee.

### **(5) How many 1199SEIU workers are covered by the Arbitration?**

Approximately 120,000 1199SEIU workers are covered by the Award, though the final number will be determined once Employers submit the ordered information to the claims administrator.

### **(6) How will the Special Wage Fund be distributed?**

The Special Wage Fund will be distributed to eligible 1199SEIU workers who timely submit a claim form to the designated claims administrator. Each worker's distribution will be determined by an applicable formula approved by the Arbitrator. Sixty percent of the Special Wage Fund will pay claims related to hours worked on 24-hour claims and forty percent of the Special Wage Fund will pay claims related to all hours worked, inclusive of hours worked on 24-hour cases. The formula awards greater credit to hours worked prior to 2016, since the bulk of violations happened in that period. The amount an individual worker will receive will depend upon the number of hours worked and/or the number of 24-hour shifts worked, but also on the number

of bargaining unit members who timely submit claim forms. No dollar of the Special Wage Fund will revert to any Employer.

**(7) Will the Special Wage Fund be evenly divided amongst all the workers? Will workers receive \$250 each?**

No. The Special Wage Fund will be distributed to all workers who submit timely claims according to the formula established by the Arbitrator. The Special Wage Fund favors those workers who have claims related to working on 24-hour cases (approximately 5-7% of workers) and those workers are expected to get significantly more than workers who did not work 24-hour cases. The \$250 per capita contribution is the mechanism by which the Special Wage Fund is funded, not the amount of damages that any single worker will receive.

**(8) When will the Special Wage Fund be distributed?**

The Arbitrator has ordered the Respondent Employers to provide certain information for each worker in their employ during the coverage period within thirty days of issuance of the Award. Within sixty days of issuance of the Award, the Respondent Employers must contribute their respective sums to create the Special Wage Fund and a claims administrator will distribute a notice to the 1199SEIU workers setting a deadline within sixty days for submission of claim forms. Distribution is expected to happen within forty-five days of the claims deadline (August 2022).

**(9) Will the Special Wage Fund be used for any other purpose?**

In addition to paying the claims of the 1199SEIU workers, the Special Wage Fund will pay the costs of the Arbitration and distribution of the Special Wage Fund, and limited attorneys' fees (though 1199 will waive it's right to recover attorneys' fees from the Special Wage Fund). In a typical class action litigation, upwards of thirty percent of a distribution goes to pay attorneys' fees, which will not happen here. In the event there are funds remaining after distribution to Employees has been made (i.e. as a result of uncashed, undelivered checks, etc.), those funds will be deposited to the 1199SEIU Home Care Industry Education Fund, which provides education and training for home care workers. No dollar of the Special Wage Fund will revert to an Employer.

**(10) Which Employers are covered by the Special Wage Fund?**

ABC Health Service Registry, AccentCare of NY, Inc., Alliance for Health, Alliance Home Services, Azor Home Care, Bronx Jewish Community Council Home Attendant Services, Bushwick Stuyvesant Heights Home Attendant, CABS Home Care, Care at Home, Chinese-American Planning Council Home Attendant Program, Inc., CIDNY, Cooperative Home Care, Family Home Care Services of Brooklyn and Queens, FECS Home Care, First Chinese Presbyterian CAHA, Home Care Services For Independent Living, Home Health Management, New York Foundation for Senior Citizens Home Attendant, Partners in Care, Personal Touch Home Care of N.Y., Personal Touch Home Care of Long Island, Personal Touch Home Care of Westchester, People Care, Inc., Premier Home Health Care, Prestige Home Attendant d/b/a All Season, Prestige Home Care, Priority Home Care, PSC Community Services, Inc., RAIN Home Attendant Services, Inc., Region Care, Richmond Home Needs, RiseBoro Homecare, Inc., Riverspring Licensed Home Care Agency, Rockaway Home Attendant, Saint Nicholas Human Support Corp., School Settlement Home Attendant Corp., Special Touch Home Care Services, Inc., Stella Orton Home Care, Sunnyside Home Care Project, Sunnyside Citywide Home Care, United Jewish Council of the East Side Home Attendant Services, Wartburg – No Place Like Home Care

**(11) How does the Special Wage Fund compare with settlements in comparable wage and hour litigation?**

In a typical class action wage and hour settlement, upwards of 40% of a settlement may go to pay attorneys' fees and distribution costs. While litigation can go on for years, this proceeding reached a final

award in three years with the Union's attorneys performing the legal work. 1199 expects that no more than 15% of the Special Wage Fund will be used for fees and costs resulting in maximum distribution to 1199SEIU workers who submit timely claims. Settlements also sometimes benefit individual workers only, rather than a class of employees.