



## Companionship Exemption

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The Fair Labor Standards Act (FLSA) is a federal law which governs wages, hours, and working conditions. The FLSA establishes minimum wage and overtime pay requirements affecting full-time and part-time workers in the private sector and in federal, state, and local governments. The FLSA generally requires employers to pay their covered employees overtime wages for all hours worked in excess of forty in a workweek; however, certain employees are specifically exempted from the FLSA's minimum wage and overtime provisions.

Since 1974, home and community-based care workers have been subject to classification as "companions" by the Department of Labor (DOL), a policy that exempts their employers from the minimum wage and overtime standards established by the FLSA. In that regard, Congress amended the FLSA to expressly extend coverage to employees in "domestic service" and excluded from coverage "any employee employed in domestic service employment to provide companionship services for individuals who (because of age or infirmity) are unable to care for themselves[.]" 29 U.S.C. ? 213(a)(15). An employee who performs companionship services in or about the private home of the person by whom he or she is employed is exempt from the FLSA's minimum wage and overtime requirements if all criteria of the exemption are met.

"Companionship services" are defined as those services for the care, fellowship, and protection of persons who, because of advanced age or physical or mental infirmity, cannot care for themselves. Such services include household work for aged or infirm persons including meal preparation, bed making, clothes washing, and other similar personal services. General household work is also included; however, and significantly, it cannot exceed 20% of the total weekly hours worked by the companion. Where this 20% limitation is exceeded, the employee must be paid for all hours in compliance with the minimum wage and overtime requirements of the FLSA. The term "companionship services" does not include services performed by trained personnel, such as registered or practical nurses.

Therefore, to fall within the companionship services exemption, the following requirements must be satisfied: (1) an employee must perform companionship services as defined within wage and

hour regulations; (2) general household work performed by the employee may not exceed 20% of the total weekly hours worked by the employee; (3) the work performed must not be of a type which requires and is performed by trained personnel, such as registered or licensed practical nurses; and (4) the services must be provided in or about the aged or infirm individual's private residence.

Finally, it is important to consider that the companionship services exemption is narrowly applied. If an employer relies upon it to avoid paying minimum wage or overtime pay, the employer must be sure that all exemption requirements are met and can be proved. Both the job description and the actual duties of the employee must establish the facts necessary for the exemption.

Accordingly, employers and home health care agencies are encouraged to consider employing a competent attorney, who specializes in employment law, to assist with the important classification of companions. This will provide invaluable piece of mind and seek to avoid potential significant liability for unpaid wages and penalties that can result from improper classification of employees.

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