



Department of Labor's Regulatory Scheme to Extend Federal Overtime and Minimum Wage Requirements Halted

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BY: MATTHEW M. COBB

The ever changing regulatory framework for Home Care Organizations and Personal Care Providers has created an uncertain environment in which to operate. As January 1, 2015, approached, many providers began preparing to implement the new Department of Labor regulations extending the federal overtime and minimum wage requirements to many home and personal care workers. In order to comply with the regulations, many providers have planned to reduce the hours of their employees while introducing additional care providers to the homes of clients.

The Department of Labor originally published this regulatory change in October 2013, and the final regulation eliminating the minimum wage and overtime exemption was set to go into effect January 1, 2015. Under the regulations the Department of Labor would have eliminated the minimum wage and overtime exemptions that third party employers have enjoyed since passage of the Fair Labor Standards Act. The Home Care Association of America, the International Franchise Association, and the National Association for Home Care & Hospice filed a lawsuit challenging the validity of the regulations. They argued that the Department of Labor exceeded its authority by promulgating regulations inconsistent with the plain language of the Fair Labor Standards Act.

Shortly before the New Year, the U.S. District Court for the District of Columbia issued two rulings in *Home Care Association of America v. Weil* (14-cv-967). On December 22, 2014, the Court issued an [Order](#) vacating the new regulations. In the Order vacating the regulations, the Court noted that the Department of Labor's regulations were a "thinly-veiled effort to do through regulations what could not be done through legislation. Such conduct bespeaks an arrogance to not only disregard Congress's intent, but seize unprecedented authority to impose overtime and minimum wage obligations in defiance of the plain language of Section 213." *Id.* At 17-18.

The Court's ruling did not address the revised definition of "companionship services." This definition would have limited the ability of home care and personal care providers to claim the companionship exemption. To be eligible for the exemption, the providers would have to demonstrate two things. First,

that the provision of care services could not exceed 20% of their weekly hours spent with each patient. Second, the caregivers would not perform general household work for the clients. This definition is much narrower than the existing definition of “companionship services” and would make it much more difficult to qualify for the exemption.

The plaintiffs returned to Court seeking a Temporary Restraining Order to prevent the implementation of the revised definition of “companionship services.” The Court granted the Temporary Restraining Order on December 31, 2014, after the plaintiffs in the litigation were able to demonstrate the irreparable harm the regulation would cause. A Temporary Restraining Order is by definition temporary. A hearing is scheduled for January 9, 2015, in which the Court will consider whether to issue a preliminary injunction stopping implementation of the “companionship services” definition during the pendency of the lawsuit.

What does this mean? For now, Home Care Organizations and Personal Care Providers can still qualify for the third party employer minimum wage and overtime exemptions, and the Department of Labor’s narrow definition of “companionship services” is not in effect.

The Williams Mullen Health Care Team will continue to monitor this case closely.

Related People

- Wyatt S. Beazley, IV – 804.420.6497 – wbeazley@williamsmullen.com
- Matthew M. Cobb – 804.420.6390 – mcobb@williamsmullen.com
- Martin A. Donlan, Jr. – 804.420.6934 – mdonlan@williamsmullen.com

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