



Court Awards Employees of Home Health Care Companies Minimum Wage and Overtime Rights

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Home health care providers could expect to pay their employees more after the Court of Appeals for the D.C. Circuit held an exemption of the Fair Labor Standards Act (FLSA) no longer applies to third-party employers of certain home health care workers. Last Friday's decision in *Home Care Association of America v. Weil* has paved the way for the government to enforce minimum wage and overtime laws against a large swath of home health care employers previously exempted from those requirements. The decision marks a potential sea change in the industry and will force third-party home health care employers to reexamine their pay practices and potentially how they conduct business in the future.

Subject to certain exemptions, the FLSA requires employers to pay minimum wage and time-and-a-half overtime pay to all their employees. One such exemption encompassed "companionship services" provided by "domestic service" workers who provide basic care for the elderly, ill, or disabled in their homes. Traditionally, a domestic service worker was not entitled to the FLSA's minimum wage and overtime guarantees, regardless of who employed the worker. Over time, domestic services increasingly have been provided by employees of third-party health care providers. In response to this evolution, the Department of Labor (DOL), which enforces the FLSA, promulgated a rule that third party employers could no longer invoke the "companionship services" exemption for its domestic service employees.

Health care providers challenged the DOL's new rule, and initially were successful in having it overturned. A District of Columbia District Court overturned the DOL's rule, saying it could not unilaterally overturn the longstanding exemption as it had operated for decades. On August 21, however, the DC Court of Appeals reversed that decision. It held that the DOL had the authority to alter the exemption so as to exclude third party providers.

In response, the DOL has announced on its website that the "two million home care workers" employed by home health care providers "now qualify for minimum wage and overtime protections." It also reminded businesses of the steps it had taken to educate employers and employees about, and to implement, the regulations. Among other things, the DOL already had stayed its own enforcement of

the rule for 15 months, so that employers could seek advice, from the DOL or elsewhere, as to how to implement the FLSA in their businesses. Absent a stay pending further appeal, the regulations are scheduled to go into effect on October 13, 2015.

Under the new rules, families employing such service providers directly can still claim the exemption, although the DOL also has promulgated a rule significantly reducing the scope of the exemption in those circumstances as well (the status of that DOL rule, which would limit the definition of "companionship services," was not covered by the August 21 opinion).

While opponents of the decision could ask for a rehearing or file a petition for a writ of certiorari to the Supreme Court, companies employing workers who provide care for the sick or elderly in their homes should begin planning for these changes now as it will be a complex and costly matter for them given the limits on Medicare and Medicaid reimbursement.

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