

DOL'S WAGE RULE FOR HOME CARE WORKERS ON HOLD

Publication
Feb 2, 2015

A federal judge has scuttled key aspects of the U.S. Labor Department's (DOL's) rule that would have extended the federal Fair Labor Standards Act's minimum wage and overtime requirements to many home care workers. The rule was to have gone into effect January 1, 2015.

Although DOL has appealed the court's rulings, for now, home care agencies may anticipate that DOL will not be enforcing those requirements as to home care aides and personal care attendants who fall within that law's companionship and live-in-domestic exemptions under the regulations that DOL sought to change.

Regulation Was Controversial

In recent weeks, the U.S. District Court for the District of Columbia issued a series of rulings that blocked the most controversial aspects of the DOL's amended FLSA rule on the companionship and live-in exemptions from going into effect. Here is a short recap:

- **October 1, 2013:** DOL issues final rule that narrows the definition of "companionship services" under the FLSA exemption and prohibits third-party employers, such as agencies, from applying the companionship exemption to its employees; DOL's intent is to make more of these workers eligible for minimum wage and overtime; rule is to go into effect on January 1, 2015.
- **December 22, 2014:** Following a court challenge by associations that represent third-party home care providers, the D.C. federal court strikes down the portion of the new regulation that would have prevented third-

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party employers from relying on the companionship and live-in exemptions.

- December 31, 2014: D.C. court issues a temporary stay to prevent the narrowed definition of “companionship services” from going into effect on Jan. 1.
- January 9, 2015: D.C. judge hears arguments from both the DOL and associations affiliated with home care providers on whether the temporary stay should be extended.
- January 14, 2015: D.C. court vacated in its entirety the DOL regulation defining the “companionship exemption.” The DOL stated that it strongly disagrees with this decision, stands by its Final Rule and is considering all of its legal options.

Good News for Home Care Providers, But Stay Tuned

These recent rulings mean that home care agencies might want to re-evaluate plans they had to change their pay practices to comply with the FLSA's minimum wage and overtime provisions for workers who would not have met the revised companionship or live-in regulations. But stay tuned, because it is unclear whether these rulings will be upheld on appeal or how other federal courts might react to them in the meantime, such as in the context of FLSA litigation brought by private litigants.

Remember, too, that state or local laws might require that minimum wage and overtime compensation be paid to home care workers, so be certain to check *all* applicable wage laws.

For more information on this or any other wage and hour laws, contact your Fisher Phillips attorney or the authors at KTroutman@fisherphillips.com or 713.292.0150 or TBoehm@fisherphillips.com or 404.231.1400.

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