



Take Care in Changing Rules for Home Health Workers

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Changing rules for home-care workers could backfire. Proposals could do harm to clients and to companions.

Among many narrow exemptions to the minimum wage and overtime requirements of the Fair Labor Standards Act (FLSA), Section 13(a)(15) has long provided an exemption that applies to workers who provide "companionship services." Specifically, such services are fellowship, care and protection for the elderly or infirm who are unable to care for themselves. Although the FLSA dates to 1938, it did not cover domestic employees until 1975. Even then, this exemption was inserted to cover "elder sitters," companions who could allow the elderly an alternative to institutionalization.

The exemption applies when these services are provided in the client's private home. Trained personnel such as nurses do not qualify for the exemption, but depending upon their duties, nurse aides or nursing assistants may. Qualifying workers' duties can include some meal preparation, bed making and laundry, but such duties cannot exceed 20 percent of the total hours worked.

The name companionship exemption accurately describes the essence of the job. Besides performing the limited household chores described, companions assist with bathing functions and generally provide company and orientation in their clients' homes. Companies that provide these services screen, hire, train, schedule, insure and monitor the performance of workers. Although these services are not characterized as medical, as our population ages, the need for them continues to increase.

If adopted, proposed changes would drastically limit who is eligible for the companionship exemption and bar it from being applicable to workers employed by third parties, such as staffing companies. Competing bills have also been introduced in Congress, with one side seeking to reaffirm the exemption and the other seeking to restrict it.

Thus, before over-reacting to ill-defined pleas for "justice" and "fairness," all parties would do well to consider the impact of eliminating or severely restricting the companionship exemption. This is especially true when considering the interests of the elderly, infirm and those who provide them with vital companionship services.

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