



USDOL Delays Its "Companionship", "Live-In Domestic" Enforcement

Insights

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As we recently reported, the U.S. Department of Labor's changes in its regulations governing the Fair Labor Standard Act's Section 13(a)(15) "companionship" exemption and Section 13(b)(21) overtime exemption for "live-in domestics" are once again in effect following a recent decision from the U.S. Court of Appeals for the District of Columbia. One of the most-important revisions is that third-party employers may no longer rely upon these exemptions.

But USDOL announced in today's Federal Register that it will not bring any enforcement actions for a 30-day period following the date that the appeals court takes the formal procedural step of issuing a "mandate" directing the lower court to enter judgment in USDOL's favor. Presumably, this also means that the agency will not initiate any pre-mandate enforcement. It is uncertain when the mandate will be entered.

"Prosecutorial Discretion" Position Still Applies

USDOL made clear that it would continue to abide by its earlier-expressed policy of exercising "prosecutorial discretion in determining whether to bring enforcement actions" for the remainder of 2015. The agency said that its judgments in this regard will be influenced primarily by whether employers have made "good faith efforts to bring their home care programs into compliance."

As a practical matter, the combination of these two enforcement policies might result in USDOL's effectively engaging in little to no enforcement activity in 2015 where the regulatory changes are concerned. However, these policies will not preclude current or former employees from commencing their own FLSA lawsuits based upon the revisions.

The Bottom Line

Home-care agencies and other third-party employers who are no longer able to rely upon these exemptions should be in compliance with the FLSA's minimum-wage, overtime, and timekeeping requirements where the affected employees are concerned or should be moving toward promptly completing steps in that direction.

Recall also that state or local laws might require that such employees be paid minimum-wage and overtime compensation without regard to these FLSA exemptions.

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