



## Companionship Exemption Changes In Effect

Insights

8.24.15

The latest twist in the ongoing saga involving the U.S. Department of Labor's changes in its regulatory provisions affecting the Fair Labor Standard Act's Section 13(a)(15) "companionship" exemption and the FLSA's Section 13(b)(21) overtime exemption for "live-in domestics" came from the U.S. Court of Appeals for the District of Columbia Circuit.

### DC Circuit Holds USDOL Acted Within Authority

Readers will recall that earlier this year a federal district judge held in *Home Care Association of America v. Weil* that USDOL exceeded its authority by attempting to preclude third-party employers from invoking these exemptions. This holding undermined the viability of these regulations including by raising questions about whether or not other courts would be bound by the decision.

Reversing the district court, the appeals court now has held that the USDOL acted within its statutory authority when it ruled that third-party employers, such as home care agencies, could no longer avail themselves of the companionship exemption. The appeals court also upheld the USDOL's narrowed definition of "companionship services" within the regulations.

The industry groups which mounted the legal challenge to the USDOL's new regulations in *Home Care Association of America v. Weil* may seek to appeal this decision to the U.S. Supreme Court. Of course even if such an appeal is filed, there is no certainty that the Supreme Court will accept review of the case or that it would issue a different decision.

### The Bottom Line

Given the uncertainty regarding the prospects of further appeal at this point, third-party employers are now essentially back to where they were when the USDOL's final rule became effective on January 1, 2015. In other words, third-party employers such as home care agencies who no longer are able to rely upon the "companionship" exemption due to USDOL's revisions would be wise to continue their preparations to be in compliance with the FLSA's compensation requirements. For one thing, the USDOL previously stated that agency officials "will give strong consideration to an employer's efforts to make any adjustments necessary to implement the Final Rule" in deciding whether to take action for the remainder of 2015.

Indeed, it is not clear how or whether these court decisions have impacted USDOL's earlier announcement that it would not bring any enforcement actions for a six-month period after January 1, 2015 and would exercise "prosecutorial discretion" in bringing enforcement actions for the

1, 2015 and would exercise prosecutorial discretion in bringing enforcement actions for the remainder of 2015. Regardless of whether USDOL continues to abide by that timeline, the agency's forbearance will not preclude current or former employees from filing their own FLSA lawsuits.

## ***Related People***

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