



Judge Vacates Parts of USDOL Home-Care Regulation

Insights

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A federal judge has scuttled key aspects of the U.S. Department of Labor's rule that would have extended the federal Fair Labor Standards Act's minimum-wage and overtime requirements to many home care workers starting January 1, 2015. Although USDOL will likely appeal the court's rulings, for now home care agencies may anticipate that USDOL 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 USDOL sought to change.

DC Court Strikes Down Controversial Regulation

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 USDOL's amended FLSA rule on the companionship and live-in exemptions from going into effect. Here is a short recap:

- October 1, 2013: USDOL 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; USDOL'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-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 January 1, 2015.
- January 9, 2015: D.C. judge hears arguments from both USDOL and associations affiliated with home care providers on whether the temporary stay should be extended.
- January 14, 2015: D.C. court vacated in their entirety pertinent portions of the USDOL regulation defining the "companionship exemption." USDOL 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.

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