Court Vacates Imminent Bar To Third-Party Employer's Claiming Companionship/Live-In Domestic Exemptions

Insights
12.23.14

We have reported that the U.S. Labor Department's changes in its regulatory provisions affecting the federal 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" are set to become effective on January 1, 2015. Perhaps the single most-significant aspect of the revisions set forth in the USDOL's "Final Rule" is the elimination of the exemptions as they relate to third-party employers, such as home-care agencies.

Now, a mere eight days before the effective date, the validity of this aspect of the regulation is suddenly in doubt: A federal district judge has 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.

Blunt Language From The Court
Judge Richard Leon of the U.S. District Court for the District of Columbia left no doubt about his assessment of USDOL's actions. Observing that six *legislative* attempts to modify the "companionship" exemption in this way have failed since 2007, Judge Leon deemed this part of USDOL's revisions to be a "thinly-veiled effort to do through regulation what could not be done through legislation. Such conduct bespeaks an arrogance to not only disregard Congress' intent, but seize unprecedented authority to impose overtime and minimum wage obligations in defiance of the plain language of [the exemptions]. It cannot stand."

At the heart of Judge Leon's holding is his determination that USDOL's impending elimination of the exemptions where third-party employers are concerned is due no judicial deference. In his view, Congress instructed USDOL to define the character of the *services* performed by companionship and live-in domestic employees but *did not* delegate to it the authority to limit the exemption based upon who the employee's employer is. As he put it, "[t]he focus is on the type of services provided, not who pays the check."

The Bottom Line
This development is a welcome one for affected employers, but there is still a question as to whether this part of the new regulations will ultimately survive in its current form. For one thing, we anticipate that USDOL will appeal the ruling, so the long-term status of the third-party-employer

regulation is unsettled. Employers should confer with counsel about what their options are at this point.

Note that the *other* aspects of USDOL's impending regulations remain unaffected by this ruling and are at the moment still scheduled to go into effect on January 1. Among other things, in this ruling the court did not vacate changes in the coming re-definition of what constitutes "companionship" services.

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