



# USDOL Defers Enforcement Action On "Companionship" Changes

Insights

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For some time now, we have followed the U.S. Labor Department's efforts to curtail the federal Fair Labor Standards Act's Section 13(a)(15) "companionship" exemption. Those efforts culminated in a Final Rule published in October 2013. The revisions will effectively eliminate the exemption in many current-day scenarios, primarily by making it unavailable to third-party employers such as home-care agencies.

The Final Rule provides that these modifications become effective on January 1, 2015, and a number of affected parties have implored USDOL to postpone this. Some reporting on yesterday's USDOL announcement rejecting these requests suggested that the changes' effective date has been delayed. It has *not* been; USDOL has in fact expressly *refused* to grant any such delay.

## So What DID Happen?

Instead, USDOL announced a "time-limited non-enforcement policy" which simply delays enforcement activity *by that agency*. USDOL says that it will not bring any enforcement actions pursuant to the amended regulations for a period of six months (until June 30, 2015). After that date, it will "exercise prosecutorial discretion in determining whether to bring enforcement actions" during the subsequent six-month period (until December 31, 2015).

USDOL says that it is doing this in light of feedback it received from a variety of organizations representing disability advocates and from certain states. For instance, Maryland and Pennsylvania apparently requested an extension of the Final Rule's effective date in order to adjust their publicly-funded home-care programs in order to comply with the modified regulation.

## The Bottom Line

Home-care agencies and other third-party employers who will no longer be able to rely upon the "companionship" exemption due to USDOL's revisions will be wise to continue their preparations to be in compliance with the FLSA's compensation requirements as of January 1. For one thing, USDOL says that, during the "prosecutorial discretion" period from July 1 until December 31, 2015, 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.

Moreover, while USDOL's delayed-enforcement policy is welcome, the agency's forbearance will not preclude one or more employees or former employees from filing their own FLSA lawsuits. In other

words, individuals can bring FLSA minimum-wage and/or overtime claims in court at any point in 2015, regardless of what USDOL does or does not do.

### ***Related People***

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