



Companionship-Exemption Regulation To Be Released (Updated 09 20 13)

Insights

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Months after its April 2013 target date, the U.S. Labor Department announced this afternoon that it is issuing a Final Rule re-stating the requirements for and limitations upon the "companionship" exemption in the federal Fair Labor Standards Act's Section 13(a)(15). USDOL reportedly will publish the actual regulation in the *Federal Register* "on or about October 1."

As readers will recall from our [prior posts](#), this exemption says that the FLSA's minimum-wage and overtime requirements do not apply to employees "employed in domestic service employment to provide companionship services for individuals who (because of age or infirmity) are unable to care for themselves . . ."

The Final Rule apparently becomes effective over a year from now, in January 2015. Judging from USDOL's [statements](#) today, the exemption's parameters will be changed substantially.

Among the most-significant modifications will be that third-party employers, such as home-care staffing agencies, will no longer be able to assert the exemption for their employees performing companionship work. USDOL says that this will be true even when the employee is jointly employed by both the third-party provider and the individual or family receiving the worker's services. Only the individual, family, or household employing a companionship worker will be able to rely upon the exemption (provided that the other exemption criteria are also met).

Another noteworthy change appears to be that the scope of the phrase "companionship services" will have been narrowed considerably. Reflecting USDOL's contention that the exemption should be primarily focused upon "fellowship and protection", exempt status would be lost if the companionship worker performs more than an incidental amount of "care" services (for example, dressing, grooming, meal preparation, driving, *etc.*). Under the coming rule, the exemption would be lost for any workweek in which "care" services exceed 20 percent of the employee's total hours worked in that workweek.

We will be examining the Final Rule in greater detail once it appears in the *Federal Register*.

UPDATED 09 20 13: We link below to a copy of what we understand to be the pre-publication version of the Final Rule package that USDOL says it will publish in the *Federal Register* "on or about October 1."

The actual changes at the document's conclusion are of course the heart of the matter, but USDOL's explanatory comments, views, rationales, and statements of intention are indispensable to an understanding of what is being done. The material will also be important to any who decide to mount a court challenge to the validity of USDOL's changes.

[29 C.F.R. Part 552 Final Rule.pdf \(1.36 mb\)](#)

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