



Proponents "Can't Wait" For Demise of Companionship, Live-In Domestic Exemptions (UPDATED: 03/10/12)

Insights

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UPDATE (03/10/12): The U.S. Labor Department has again extended the deadline for submissions. Comments must now be received by Wednesday, March 21, 2012.

The U.S. Labor Department has extended the time for commenting upon the proposed provisions that would essentially spell the end of the federal Fair Labor Standards Act exemptions for companions and live-in domestic-service workers. The new deadline is **March 12, 2012**.

This extension was announced over the objections of many who favor the curtailment of these exemptions. The Paraprofessional Healthcare Institute, one of the groups pushing for the changes, put it this way: "The companionship exemption [restriction] was included as part of President Obama's 'We Can't Wait' agenda, and we wholeheartedly agree." According to PHI, the fact that more than 2,000 comments have been submitted already is cause for bringing public input to a close.

It is clear that the expected campaign to generate favorable comments has been underway. As one example, many submissions say this, with little variation:

Along with [GROUP NAME HERE] and on behalf of home care workers across the country, I am writing in support of the Department of Labor's proposed rule (RIN) 1235-AA05. Home care workers provide an invaluable service to our older family members and people living with disabilities, working hard to help them stay in their homes. The proposed rule, which would provide home care workers with minimum wage and overtime protections, is essential to stabilizing the quality and consistency of care for those who need care and to improving the quality of the jobs of those providing that care. Enacting the rule takes one step toward ensuring a stable and skilled workforce to meet the growing demand for these services. Thank you for recognizing the essential service home care workers provide by suggesting this rule. We urge you enact it as soon as possible.

Perhaps the proponents' sense of urgency has been provoked by the fact that workers and employers who would be adversely affected by the proposed rules appear to have been voicing a counterbalancing opposition in greater numbers as the former deadline approached.

Now that the Labor Department has decided that the proposals *can* wait a little longer, those who wish to offer substantive arguments against them can take advantage of the additional time. For instance, they might urge the Labor Department to consider the fact that, while Congress authorized it to "define[] and delimit[]" the companionship exemption, no such authority appears in the FLSA's live-in domestic overtime exemption. *Compare* 29 U.S.C. § 213(a)(15) *with* 29 U.S.C. § 213(b)(21).

Moreover, not so long ago, it was the constitutional role of Congress to "enact" FLSA changes thought to be desirable for public-policy reasons.