



FLSA's "Companionship" Exemption In Peril

Insights

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If a recently proposed amendment becomes law, the federal Fair Labor Standards Act's Section 13(a)(15) exemption for certain "companionship" employees will essentially be eliminated.

The FLSA's minimum-wage and overtime requirements do not apply to "any employee employed in domestic service employment to provide companionship services for individuals who (because of age or infirmity) are unable to care for themselves . . ." "Domestic service employment" refers to services of a household nature the worker performs in or about the private home of the person by whom he or she is employed. The term "companionship services" means providing care, fellowship, and protection to people who cannot care for themselves due either to advanced age or to physical or mental difficulties. Additional U.S. Labor Department regulations and interpretations limit how and to whom the exemption may be applied.

H.R. 5902 and S. 3696, introduced respectively by Representative Linda Sánchez (D-CA.) and Senator Robert Casey (D-PA.), would narrow the exemption's scope so much that it would be largely meaningless. The amended exemption would be available only if:

- The companionship employment is irregular or intermittent;
- The work is not performed by someone whose vocation is to provide companionship services;
- The worker is employed only by the family or household using his or her services (presumably, this is intended to exclude even joint-employment arrangements involving, for instance, the worker, a home-healthcare agency, and the service recipients); and
- The worker performs the services for no more than 20 hours per week in the aggregate, taking into account all of the work done for the family or household employers served.

As a practical matter, this would mean that most employees providing companionship services (and apparently *all* such workers employed by home-healthcare agencies and similar organizations) would no longer be exempt. Both bills have been referred to the appropriate legislative committees at this point, so it does not appear that action is imminent. Even so, it is not too soon for opponents of these measures to make their views known to their Senators and Representatives.