



Major Changes To Home Companionship Exemption Announced

Insights

9.18.13

On September 17, the U.S. Labor Department (DOL) announced that it will be issuing a final rule that will bring significant changes to the “companionship” exemption in the federal Fair Labor Standards Act’s Section 13(a)(15).

The final rule is scheduled to be published in the Federal Register in October and will become effective January 2015.

Although the Final Rule is not yet available, the DOL issued a press release and “fact sheets” purporting to summarize the changes.

Under the current exemption, the FLSA’s minimum wage and overtime requirements do not apply to employees “employed in domestic service employment to provide companionship services to individuals who (because of age or infirmity) are unable to care for themselves....”

The most significant change is that third-party employers, such as homecare staffing agencies, will no longer be able to assert the exemption for employees who provide companionship services.

According to the DOL, 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.

Beginning in January 2015, only the individual, family, or household employing a companionship worker may claim the exemption.

Another apparent change will be that the scope of the term, “companionship services” will be narrowed and companions will be further limited in the incidental “care” services that they can perform each workweek.

These “care” services include meal-preparation, driving, grooming, bathing and similar activities. According to the DOL’s view, such activities should be secondary to the “fellowship and protection” services that companions also provide.

Under the final rule, if the companion spends more than 20% of total hours performing such incidental “care” services in a given workweek, the exemption will be lost for that workweek.

To sum up, beginning January 2015, the vast majority of employers that currently rely upon the exemption (third-party employers) will be required to begin paying the applicable minimum wage and overtime, if they do not do so already.

Moreover, even for families and individuals that will still be able to utilize the exemption, the exemption is more likely to be lost in many work weeks, due to companions' performing "care" services that are subject to the 20% cap limitation.

Opponents of the proposed rule had argued that these changes would drive up the cost of in-home care, potentially forcing many families to institutionalize seniors, but those arguments appear to have lost out.

Employers of companions must therefore assess what the impact of the new rule will be on their business, and to respond to the changes. If you'd like help doing that, just let us know.

For more information, please refer to our [Wage and Hour Laws Blog](#), or consult your Fisher Phillips attorney.

This Legal Alert provides an overview of a specific new federal regulation. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.