

D.C. Court Strikes Down Two USDOL Regulations and Restores Full “Companionship Exemption” Under the FLSA

In a victory for Home Care employers, the U.S. District Court for the District of Columbia issued consecutive decisions which struck down two regulations issued by the U.S. Department of Labor (“USDOL”) that would have eviscerated the “companionship exemption” contained in the Fair Labor Standards Act (“FLSA”).

The two USDOL regulations enacted in late 2013 were prevented from taking effect, as scheduled, on January 1, 2015, by two related decisions on [December 22, 2014](#) and [January 14, 2015](#), which vacated both regulations on the ground that they “conflicted with the [FLSA] statute itself.” Each of the two challenged regulations would have imposed greater overtime obligations on Home Care employers, by sharply reducing the reach of the FLSA “companionship exemption,” which, for 40 years, had excluded most Home Care work from federal overtime laws.

Specifically, the exemption excludes from federal minimum wage and overtime obligations companionship and live-in “services which provide fellowship, care and protection to a person who, because of advanced age or physical or mental infirmity, cannot care for his or her own needs,” unless the work is performed by a Registered Nurse or similarly trained professional.

In the [first of the two decisions](#), the District Court struck down a USDOL regulation that would have eliminated the companionship exemption unless the Home Care worker is employed directly by the patient or household itself, rather than by an Agency. Since the vast majority of Home Care workers are employed by Home Care Agencies, this new regulation would have had sweeping impact, had it taken effect. In striking down the regulation, the Court held that “Congress intended the exemption to apply to all employers who provide companionship and live-in domestic services. . . .” It curtly rejected the new regulation as contrary to the statute, noting that “Congress surely did not delegate to the [USDOL] here the authority to issue a regulation that transforms defining statutory terms . . . based on who cuts a check, rather than what work is being performed.”

Shortly thereafter, on January 14, 2015, the Court [addressed a second USDOL regulation](#) which redefined – and significantly narrowed – the type of work that would be covered under the companionship exemption, restricting it to only those companions who provide “care” or assist with “activities of daily living” during less than 20% of their total hours. Since Home Care is routinely intended to provide significant assistance with activities of daily living (such as driving, meal preparation, dressing, feeding and bathing), this regulation virtually eliminated the companionship exemption. The Court rejected the regulation on the ground that it contradicts the FLSA itself. The statutory exemption refers to “care” and services for the elderly and disabled “who are unable to care for themselves.” The Court determined that the USDOL regulation would “write out of the exemption the very ‘care’ the elderly and disabled need” In a closing flourish, the Court scolded the USDOL for usurping Congressional authority:

“Redefining a 40-year-old exemption out of existence may be satisfyingly efficient to the Department of Labor, but it strikes at the heart of the balance of power our Founding Fathers intended to rest in the hands of those who must face the electorate on a regular basis.”

Taken together, the two decisions wholly restore the previously-existing companionship and live-in exemptions from federal minimum wage and overtime laws. An appeal to a higher federal court may well follow, so the two decisions may not be the final word on the USDOL Regulations. It remains prudent to continue to follow this issue closely for further development, and to consult counsel if needed.

In addition, Home Care Agencies in New York should take note that, even in the absence of the applicability of federal minimum wage and overtime laws, New York law requires that home care employees be paid a minimum wage of \$8.75 per hour, and requires that hours over 40 in a work week be paid at 1½ times the State minimum wage (i.e., \$13.125 per hour) rather than 1½ times the employee’s regular rate.

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