
BOND INFORMATION MEMO

Labor and Employment Law

October 2013

The U.S. Department of Labor Extends FLSA Protections to Most Home Care Workers

The U.S. Department of Labor recently issued a final rule which narrows the companionship exemption to the Fair Labor Standards Act (“FLSA”) and extends the FLSA’s minimum wage and overtime protections to most direct care workers who provide essential home care assistance for the elderly and individuals with illnesses, injuries, or disabilities. The new rule will take effect on January 1, 2015.

The final rule defines “companionship services” to include “fellowship” (engaging the person in social, physical, and mental activities) and “protection” (being present to monitor the person’s safety and well-being). The final rule also provides that “companionship services” may also include “care” (assistance with activities of daily living, such as dressing, feeding, and bathing), but only if such services do not exceed 20 percent of the employee’s total hours worked in a workweek per consumer. In other words, an employee who spends more than 20 percent of his or her workweek performing “care” will not fall within the companionship exemption and will be entitled to minimum wage and overtime under the FLSA.

The final rule also specifies that third-party employers of direct care workers (such as staffing agencies, public agencies, and home care agencies) may not claim either the exemption for companionship services or the exemption for live-in domestic service employees, even when the employee is jointly employed by the third-party employer and the individual, family, or household using the employee’s services. However, the individual, family, or household may still claim any applicable exemption, even where there is a third-party joint employer.

Although the final rule does not go into effect until January 1, 2015, home healthcare agencies should begin evaluating which of their currently exempt employees will need to be converted to non-exempt status as a result of the final rule. Home healthcare agencies will need to ensure that their non-exempt workers are paid at or above the minimum wage for each hour worked and are paid overtime for all hours worked in excess of 40 in a workweek. Agencies will also need to ensure that they maintain required records for such non-exempt employees and pay non-exempt employees appropriately for all travel time, sleep time, and waiting time between patient visits, to the extent required by the FLSA.

To learn more, contact Katherine Ritts Schafer at (315) 218-8000 or kschafer@bsk.com.

CONNECT WITH US ON LINKEDIN: SEARCH FOR BOND, SCHOENECK & KING, PLLC

FOLLOW US ON TWITTER: SEARCH FOR BONDLAWFIRM



Bond publications are for clients and friends of the firm and are not a substitute for professional counseling or advice. For information about our firm, practice areas and attorneys, visit our website, www.bsk.com.
Attorney Advertising • © 2013 Bond, Schoeneck & King, PLLC



Commitment • Service • Value • Our Bond