

PUBLICATION

New Protections Proposed for Domestic Caregivers Under FLSA

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The Department of Labor's (DOL) Wage and Hour Division recently announced proposed rules to expand minimum wage and overtime protections for domestic caregivers under the Fair Labor Standards Act (FLSA). The new rules propose to limit the types of work exempt from FLSA wage requirements, increase record keeping requirements for certain domestic workers, and clarify that companionship exemptions are limited to individuals employed by the family or household using the services.

In 1974, Congress amended the FLSA to extend coverage to many domestic workers – maids for example – under the theory that such individuals, even if employed in private homes, affect interstate commerce. There has been, however, a total exemption (from both overtime and minimum wage) for employees employed "to provide companionship services for individuals who (because of age or infirmity) are unable to care for themselves." These are home health care workers.

On December 15, 2011, the DOL's Wage and Hour Division published a notice of proposed rulemaking to revise companionship and live-in worker regulations set forth in Sections 13(a)(15) and 13(b)(21) of the FLSA. The proposed changes seek to expand minimum wage and overtime protections for domestic caregivers by limiting exemptions from FLSA wage and hour requirements. The proposed rules seek to limit application of the exemption following the Supreme Court's decision in *Long Island Care at Home, Ltd. v. Coke*, 551 U.S. 158 (2007), where the Court upheld the exemption's application to individuals employed by third-party agencies who provide home health care. Individuals employed directly by private households would still be exempt from overtime and minimum wage, however.

Specifically, the proposed rules would:

- Eliminate language requiring domestic service to be performed in the employer's home, and add new occupations, including home health aides and personal care aides;
- Clarify that "companionship services" subject to the exemption do not include medical care typically provided by personnel with specialized training;
- Limit the types of activities that may be considered incidental to the provision of companionship services by excluding certain tasks, such as vacuuming and window washing;
- Clarify that companionship exemptions are limited to companions employed by the family or household using the services, and do not apply to third-party employers even where an employee is employed jointly by the third party, and the family or household; and
- Amend record keeping requirements to require employers to maintain hourly work records for live-in domestic employees.

Agencies that are in the business of providing home health care services should expect steep increases in labor costs if these rules are approved as proposed, as they would entitle home health care workers to federal minimum wage and overtime compensation.

If you have questions about these proposed rules and how they may affect your company, please feel free to reach out to your Baker Donelson attorney or any one of the more than 70 Labor & Employment attorneys

located in Birmingham, Alabama; Atlanta, Georgia; Baton Rouge, Mandeville and New Orleans, Louisiana; Jackson, Mississippi; and Chattanooga, Johnson City, Knoxville, Memphis and Nashville, Tennessee.