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D.C. District Court Vacates Regulation Impacting Overtime Eligibility Under Companionship Exemption

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On December 22, 2014, the U.S. District Court for the District of Columbia vacated a key portion of a U.S. Department of Labor ("DOL") regulation amending the minimum wage and overtime exemptions for "companionship" domestic service workers. The regulation was scheduled to go into effect on January 1, 2015. On December 31, 2014, the Court issued an order staying implementation of the regulation until January 15, 2015. The Court has scheduled a hearing for January 9, 2015 to address the plaintiffs' motion for a preliminary injunction. It is expected to rule on that motion before the temporary stay expires.

As described in our October 13, 2014 post the "companionship exemption" in the Fair Labor Standard Act (FLSA) exempted from minimum wage and overtime requirements workers who provided "companionship services" to persons who, because of advanced age or physical or mental infirmity, could not care for themselves. The revised regulations issued by the DOL, and partially struck down by the Court, would have barred third-party employers from claiming the exemption for their workers who provide domestic services for others. This regulation would have extended federal minimum wage and overtime coverage to an estimated two million workers.In Home Care Association of America v. Weil U.S. District Judge Richard J. Leon explained that the United States Supreme Court, in *Long Island Care at Home, Ltd. v. Coke*, 549 U.S. 1105 (2007), had already rejected "a challenge to the validity of the long-standing inclusion of employees paid by third parties within the companionship services exemption." The Weil court also noted that following the Cokedecision, bills to revoke the exemption were introduced by "the majority party in both the House and Senate in three consecutive Congresses (110th, 111th, and 112th)," however, they never "generated sufficient support to get out of committee and to the floor of either house of Congress."

In 2011, the Department of Labor took it upon itself to modify the scope of the companionship exemption, attempting to do through regulation what could not be achieved through legislation. It published a Notice of Proposed Rulemaking to, among other things, exclude third-party employers from the home companion exemption. The Department published the final rule on October 1, 2013. Several home care industry trade groups, including Home Care Association of America, the International Franchise Association, and National Association for Home Care & Hospice, brought suit, challenging the regulatory changes under the Administrative Procedure Act.

The Weil court agreed that the DOL had exceeded its authority in promulgating the new regulation. Explaining that the "Department rests its argument on delegated definitional authority and general implementation authority to answer what it considers to be open questions left by Congress," the court determined that "the exemption enjoyed by third-party employers over the past forty years is not an open question." As such, the "Department of Labor cannot . . . manipulate its definitional authority in such a way as to effectively rewrite the exemption out of the law." Judge Leon explained that Congress, in drafting the exemption, was clearly "concerned with what services employees were providing, not whether money was routed through a third party." Because there is no "explicit-or implicit-delegation of authority to the Department to parse groups of employees based on the nature of their employer who otherwise fall within" the exemption, the Department, Judge Leon held, overstepped its authority.

As a result of the Court's order, the exclusion of third party employers from the companionship employee exemption will no longer take effect on January 1, 2015. However, other aspects of the rule not addressed in the decision will impact the scope of the home companion exemption. For example, the new regulations narrow the definition of companionship services, limiting those that can be excluded from overtime and minimum wage requirements based on their duties. Most significantly, the current regulations define "companionship services" as "those services which provide fellowship, care, and protection for a person who, because of advanced age or physical or mental infirmity, cannot care for his or her own needs." The revised rule removes "care" from that definition. "Care" activities include assisting with "activities of daily living (such as dressing, grooming, feeding, bathing, toileting and transferring)" or with "instrumental activities of daily living, which are tasks that enable a person to live independently at home (such as meal preparation, driving, light housework, managing finances, assistance with the physical taking of medication, and arranging medical care)." Under the final rule, the exemption will no longer be available for home care workers who spend more than 20 percent of their working hours engaged in such "care" activities.

While such portions of the new rule are also being challenged, they were not invalidated by the Court in its December 22, 2014 decision. As such, as of January 1, all employers of home care workers, including third party employers, should consider the duties such workers perform in evaluating whether they must pay wages in compliance with the minimum wage and overtime requirements. That being said, the Department announced on October 7, 2014 that it will delay bringing enforcement actions against employers for violations of FLSA obligations resulting from the amended regulations until June 30, 2015.

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