

Update on the Fight Over the Companionship and Live-In Domestic Worker FLSA Exemptions: Final Rule Set to Go Into Effect on October 13, 2015

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A U.S. Department of Labor final regulation prohibiting third-party home care agencies and other third-party employers from taking advantage of the Companionship and Live-In Domestic Worker minimum wage and overtime exemptions is set to go into effect on October 13, 2015.

Back in January 2015, [we wrote](#) about *Weil v. Home Care Assoc. of America*, in which the D.C. federal court rejected the Department of Labor (DOL) final regulation. The victory for the third-party employers proved short-lived, however, when in August 2015, the D.C. Circuit of Appeals [reversed](#) the lower court's decision and upheld the final regulation. Late last month, the D.C. Circuit Court refused to stay the implementation of the rule pending an appeal to the Supreme Court, which means the rule becomes effective next week.

Relying on the Supreme Court's decision in *Long Island Care at Home, Ltd. v. Coke*, 551 U.S. 158 (2007), the D.C. Circuit Court concluded that the DOL had the authority to limit the exemptions and that its construction of the exemptions here were entirely reasonable. The D.C. Circuit further held that the DOL did not act "arbitrarily or capriciously" in deciding to reverse course with respect to third-party employers in light of the dramatic changes in the home care industry since the exemptions were enacted in 1975, including the fact that the "vast majority" of home care workers today are employed by third party agencies, and Congress' original intent to limit the scope of the FLSA exemptions.

Though it is possible the Supreme Court could reverse or Congress can weigh in further, for now home care agencies and third party employers of domestic workers should revise their payroll policies accordingly. Further, while the DOL is offering employers a 30-day enforcement grace period, nothing stops employees from suing in court immediately.

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National Law Review, Volume V, Number 279

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