

Home Health Care Workers Now Protected Under The FLSA

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On Tuesday, the Department of Labor (DOL) issued its [Final Rule](#) regarding home health care workers and protections under the federal Fair Labor Standards Act (FLSA). Under the Final Rule, which will become effective **Jan. 1, 2015**, the minimum wage and overtime protections will extend to nearly 2 million in-home health care workers who care for the elderly, ill and disabled.

The Final Rule revised certain definitions, including “domestic service employment” and “companionship services.” Since 1974, “domestic service” employees have been covered by the FLSA and have included cooks, butlers, valets, maids, housekeepers, governesses, janitors, laundresses, caretakers, handymen, gardeners, and family chauffeurs. However, there were three discrete exemptions under the FLSA relating to “domestic service” workers: (1) casual babysitters; (2) those providing “companionship services” for individuals because of age or infirmity could not care for themselves; and (3) domestic service employees who resided within the household.

Under the Final Rule, the DOL narrowed these exemptions. Now, only under narrow and limited circumstances can those providing “companionship services” or live-in domestic services qualify as exempt under the FLSA. Only if the worker is directly employed by a member of a household where the individual is employed can the companionship exemption be claimed. Additionally, the exemption will apply if the employee provides assistance with activities of daily living or tasks that help the individual live independently at home provided that such care does not exceed 20 percent of the total hours worked in the workweek and the care is provided in conjunction with the provision of fellowship and protection. Individuals who provide medically related services are not considered “companionship service” workers.

Importantly, the FLSA exemption for such workers can be claimed only by individuals or families, and not by third-party employers such as home health care agencies.

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