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DOL Extends Minimum Wage and Overtime Requirements to  
Most Home Care Employees

On October 1, 2013, the Department of Labor published its Final Rule, made effective January 1, 2015, eliminating the application of the "companionship exemption" to employees employed by home care agencies and other companies. Consequently, the minimum wage and overtime protections of the Fair Labor Standards Act (FLSA) have been extended to approximately 1.9 million more home care employees in the United States.

In 1974, Congress extended the protections of FLSA to "domestic service" employees, but exempted from the Act's minimum wage and overtime provisions those domestic service employees who provided "companionship services," which consisted of most home health aides, personal support aides and certified nursing assistants, so long as those employees did not spend more than 20 percent of their time performing general household work nor any services which required advanced medical training, such as that of a registered nurse. Also exempted from the Act's overtime provision were domestic service employees who reside in the household in which they provide services. However, with the Final Rule, third party employers of companionship service employees may no longer avail themselves of the exemption, even where there is a joint employment relationship between the agency and the individual or member of the family or household using the services.

The Final Rule also narrows the definition of "companionship services" in the situation where the home care worker is employed solely by the individual, household or family receiving the services. Specifically, only employees who provide "fellowship and protection" (as defined by the Final Rule) for an elderly person or person with an illness, injury or disability continue to be exempted. Performance of medically related tasks during the workweek results in loss of the exemption, so that such employees are entitled to minimum wage and overtime pay.

Connecticut's minimum wage and overtime laws are applicable to employees in domestic service employment as defined in the FLSA, and are currently not enforced as to employees who are exempt under the FLSA's companionship exemption. The changes to the FLSA's companionship exemption may result in a change to Connecticut's wage and hour law. We will continue to monitor this issue and provide updates as developments warrant.

Home health care agencies and other companies will need to ensure that the impacted home health care employees are paid at or above the minimum wage for each hour worked, as well as the overtime rate for all hours actively worked in excess of 40 in a given workweek. Employers should also ensure that such employees are paid for includable travel and waiting time between patient visits as required by the FLSA to ensure working time is properly recorded.

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