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Court Vacates DOL's Regulations Mandating Minimum Wage and Overtime Payments to Home Health Care Employees

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By Robert R. Roginson

Just as many home health care agencies were gearing up for a major change to their businesses, a federal judge in Washington D.C. struck down the new U.S. Department of Labor (DOL) regulation extending the federal overtime and minimum wage requirements to home care workers employed by third-party businesses. The court's.....

Just as many home health care agencies were gearing up for a major change to their businesses, a federal judge in Washington D.C. struck down the new U.S. Department of Labor (DOL) regulation extending the federal overtime and minimum wage requirements to home care workers employed by third-party businesses. The court's December 22, 2014 ruling in *Home Care Association of America v. Weil* (No. 14-cv-967) vacates the new regulation and means that the amendment will not take effect on January 1, 2015, unless it is stayed or otherwise reversed by an appellate court. The DOL has not stated how it intends to respond to the court's ruling, though an appeal is expected. The court's ruling does not affect the other parts of the new regulation, including its narrowed definition of what constitutes "companionship services" and its recordkeeping requirements.

The court's decision follows a challenge to the new regulation by the Home Care Association of America, the International Franchise Association, and the National Association for Home Care & Hospice, which contended that the new DOL regulation was inconsistent with the actual language of the Fair Labor Standards Act (FLSA) and congressional intent in creating the minimum wage and overtime exemptions. The DOL had published the new regulation in October 2013, and the final regulation eliminated the minimum wage and overtime exemptions for third-party employers as of January 1, 2015. In issuing its order vacating the new regulation, the court relied on a 2007 case out of the Supreme Court of the United States upholding the validity of the third-party exemption and the fact that Congress has not acted on several efforts to abolish the

exemption. The court stated, “the Department of Labor amazingly decided to try to do administratively what others had failed to achieve in either the Judiciary or the Congress.”

Whether third-party employers may avail themselves of the FLSA companionship and live-in exemptions in the long run remains to be seen. The DOL may not appeal the decision or, if it does appeal, the decision may or may not be reversed. What we do know as of now is that the new regulation regarding third-party employers’ minimum wage and overtime obligations will not go into effect on January 1, 2015. Therefore, third-party employers can still qualify for the companionship and live-in FLSA exemptions.

However, the court’s decision did not vacate the new definition of “companionship services,” so employers must comply with the narrower “companionship services” definition. Employers that wish to rely on the companionship exemption after January 1, 2015 must ensure (1) that the time caregivers spend performing “care” services does not exceed 20 percent of their weekly hours per patient and per week and (2) that caregivers do not perform any general household work. In addition, it is worth noting that even if third-party employers qualify for the FLSA exemption following the December 22 ruling, they may still be subject to their state’s or local government body’s minimum wage and overtime requirements.

For the latest update on this decision, see our most recent post, “Court Stays New FLSA Companionship Regulation From Going Into Effect,” which was published on January 6, 2015.

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