

PUBLICATION

DOL Challenge Expected to Judge's Decision to Vacate Proposed Caregiver Wage Regulations

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On January 14, 2015, U.S. District Court Judge Richard J. Leon, in the District of Columbia, issued an opinion and order in *Home Care Association of America v. Weil*, Civil Action No. 14-967, vacating a U.S. Department of Labor (DOL) regulation that would eliminate the exemption from minimum wage and overtime payments for most "companionship" workers.

On December 31, 2014, Judge Leon issued a temporary restraining order staying the Final Rule's revisions to the definition of companionship service, and on Friday, January 9, 2015, Judge Leon held a hearing on the merits of the plaintiffs' challenge to the revised companionship services definition. The proposed regulation was previously set to become effective on January 1, 2015.

After that heated hearing, however, Judge Leon issued his order vacating the remainder of the DOL regulation focused on eliminating the exemption for most "companionship" domestic workers. This new ruling comes on the heels of another order issued by Judge Leon vacating another DOL regulation that would have taken away the exemptions from third-party employers of domestic companionship and live-in workers.

According to Judge Leon, the regulations promulgated by the DOL narrowed the Fair Labor Standards Act (FLSA) exemption and were contrary to the legislative intent. Specifically, the DOL sought to narrow the definition of the term "companionship services" by requiring minimum wage and overtime for companionship workers if more than 20% of their work time is spent carrying out care tasks such as bathing, feeding, dressing, and the like.

The plaintiffs in the *Home Care* case challenged the DOL's proposed definition and regulations, arguing that likely more than 90% of the regular services of companionship workers would fall within the type of care the DOL was trying to limit to a mere 20%. Moreover, according to the plaintiffs, this type of care is often the primary reason why companionship workers are needed and hired. In his opinion, Judge Leon, agreeing with the plaintiffs, said that limiting the type of care being discussed "to only 20 percent of a worker's total hours defied logic and Congressional intent."

The DOL strongly disagrees with the orders affecting its regulations and is considering all of its legal options before determining how to respond to this most recent order. On its website the DOL issued the following statement:

The Department issued the Home Care Final Rule to extend minimum wage and overtime protections to almost two million home care workers. The Department stands by the Final Rule. We believe the Rule is legally sound and is the right policy—both for those employees, whose demanding work merits these fundamental wage guarantees, and for recipients of services, who deserve a stable and professional workforce allowing them to remain in their homes and communities.

For now the status quo has been maintained, but this is likely not the end to this fight. We will keep you updated as this matter progresses.

