

PUBLICATION

DOL's Proposed Rule for Home Health Care Moves Forward

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Wednesday, March 21, was the deadline to comment on the Department of Labor's (DOL) proposed rule to amend the companionship and live-in worker regulations under the Fair Labor Standards Act (FLSA). Under the current regulations, companions to the aged and infirm are exempt from the FLSA's minimum wage and overtime requirements, and live-in domestic workers are exempt from the FLSA overtime rules. Specifically, the FLSA exempts "any employee employed in domestic service employment to provide companionship services for individuals who (because of age or infirmity) are unable to care for themselves (as such terms are defined and delimited by regulations of the Secretary [of Labor])."

The proposed rule would effectively require employers to ensure that the vast majority of professional caregivers, i.e., home health care workers, are paid at or above minimum wage and are paid time-and-one-half for all hours worked over 40 in a workweek. The White House estimates that as many as 1.79 million workers will be affected by the rule change. Specifically, the proposed changes to the regulations would:

- More clearly define the tasks that may be performed by an exempt companion; and
- Limit the companionship exemption to individuals employed only by the household using the services. Third party employers, such as in-home-care staffing agencies, could not claim the exemption even if the employee was jointly employed by the third party and the household.

According to the DOL, "the workers that are employed by in-home care staffing agencies are not the workers that Congress envisioned when it enacted the companionship exemption (i.e., neighbors performing elder sitting), but instead are professional caregivers entitled to FLSA protections." The home care industry, by contrast, projects that elimination of these overtime exemptions will significantly raise the cost of care and negatively impact the industry.

As the country's population ages, home-based health care has become a booming industry. The DOL's proposed rule will require home health care agencies to revisit and likely alter their wage and hour policies and practices. Agencies will need to pay home health care workers at or above minimum wage for each hour worked as well as time-and-one-half for all hours worked over 40 in a given work week. Agencies will also need to ensure that home health care workers are paid for travel and wait time between patient visits to avoid potential wage and hour exposure.

Baker Donelson attorneys will continue to monitor legislative developments in this field. If you have questions about FLSA issues or the home health care industry, please contact any of our nearly 60 attorneys dedicated specifically to Labor & Employment issues, located in Birmingham, Alabama; Atlanta, Georgia; Baton Rouge, Mandeville and New Orleans, Louisiana; Jackson, Mississippi; Chattanooga, Johnson City, Knoxville, Memphis and Nashville, Tennessee; and Houston, Texas.