

## Department of Labor Delays Enforcement of New Companionship Wage and Hour Regulations; Employers Could Still Face Private Lawsuits

The federal Fair Labor Standards Act (FLSA) requires most employers to pay most employees minimum wage and overtime after forty hours in a work week. Among the categories of employees exempt from minimum wage and overtime requirements are “domestic service employees” who provide “companionship services” to elderly people or people who otherwise cannot care for themselves. The Department of Labor had long taken the position that this exemption applied both to companions that were employed directly by an individual or family and those that worked through third party agencies and were assigned to individuals or families.

One year ago, in October 2013, the Department of Labor announced final regulations that changed that position and would apply minimum wage and overtime obligations on agencies or third party providers that employed companions while maintaining the exemption for companions directly employed by individuals or families. The Department recognized that adjusting to this new regulation could take some time, so the effective date of the new regulation was set for January 1, 2015.

On October 7, 2014, the Department announced that it would not enforce the new regulations for at least six months after the effective date, and for the second six months it would exercise “prosecutorial discretion” in enforcing the new rules. In the meantime, the Department says it will continue to work with providers to assist with compliance with the new regulations.

Employers in this business can only breath half a sigh of relief, however, because the regulations themselves were not delayed and Department of Labor enforcement actions are only one way that employers can face legal difficulties. Individuals and groups of individuals may bring lawsuits directly against an employer for wage and hour violations. Therefore, an employer who is not in compliance with the new regulations after January 1, 2015 may be safe from Department of Labor enforcement actions, but is exposed to private lawsuits, including collective actions, for such violations. Employers, therefore, should continue efforts to be in compliance with the new rules at the beginning of 2015.

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