

## EMPLOYMENT SERVICES ALERT

9/23/13

### Department of Labor Extends Fair Labor Standards Act Protections to Home Health Care Workers

In a rule that will become effective on January 1, 2015, the US Department of Labor has made significant changes to a longstanding provision of the Fair Labor Standards Act (FLSA) as it applies to companies and individuals who provide companionship services to elderly persons or individuals who have disabilities, injuries or illnesses. Since 1974, those persons who provided companionship services in homes have been exempt from the minimum wage and overtime provisions of the FLSA, but for those workers who are employed by third-party employers such as home health care agencies, the exemption will be eliminated. As such, those agencies will be required to pay not only minimum wages to its workers, but also overtime pay should their hours exceed 40 hours per week. A worker can fall under the companionship exemption only if he or she is employed directly by members of the household, and when the worker provides what is called "fellowship and protection" assistance, defined as engaging the individual in social, physical and mental activities and also being present in and out of the home to monitor the person's safety and well-being. If the person providing such services also provides assistance in activities of daily living (ADLs), like dressing, grooming, feeding, bathing, toileting and transferring the person to and from furniture, and/or instrumental activities of daily living (IADLs), defined as meal preparation, light housework, driving, managing finances and assistance with taking medication, the hours spent doing those tasks cannot exceed more than 20 percent of the hours worked per week.

At the present time, only 15 states require minimum wage and overtime protection to home health care workers while another 6 states and the District of Columbia mandate minimum wages for these workers. It is estimated by the Department of Labor that nearly 2 million workers will be affected by these new rules throughout the United States.

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