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Home Health Care Workers to Receive Minimum Wage and Overtime Protections

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If your organization is in the home health field, be aware that the rules for how to pay home care workers is going to significantly change. Under a recently issued Final Rule, the U.S. Department of Labor (DOL) will extend FLSA pay protections to an estimated 1.9 million home care workers in the U.S. who currently are treated as exempt under the companionship exemption. As a result, workers who provide in-home care to ill, elderly, or disabled individuals through a third party employer will be covered by the minimum wage and overtime provisions of the Fair Labor Standards Act (FLSA) beginning January 1, 2015.

Companionship Services Exemption Narrowed

The so-called "companionship exemption," implemented in 1975, allowed organizations employing workers who provide home care assistance to elderly, ill, injured or disabled persons to treat these workers as exempt from the federal minimum wage and overtime pay provisions. The new Final Rule narrows the exemption for companionship services in two key ways.

First, the Final Rule prohibits third party employers of health care workers, such as home care staffing agencies, from claiming the exemption for companionship services. The rule makes clear that only an individual, family or household employing a home health worker may claim the companionship exemption. This means that home care workers employed by a company that provides home health services must be paid minimum wage for hours worked and receive overtime pay as provided under the FLSA.

Second, the definition of "companionship services" is limited to only fellowship and protection services, with attendant care limited to only 20 percent of the total hours worked with that person each week. Examples of fellowship and protection services include reading, playing games, accompanying the person on walks, taking the person to appointments or social events and conversing. If the worker provides more than 20 percent of their time on activities of daily living, such as dressing, feeding, bathing, toileting, housework, managing finances and arranging medical care, the worker is not exempt under the companionship exemption.

Medically Related Services Not Included in Companionship

Exemption

A direct care worker who provides medically related services is ineligible for the companionship exemption. Under the Final Rule, tasks will be considered medically related when they typically are performed by trained personnel, such as registered nurses, licensed practical nurses or certified nursing assistants, regardless of the training or occupational title of the worker actually performing the services. This means that even if a worker normally meets the companionship exemption by providing only fellowship and protection services, the worker loses the exemption for any workweek in which he or she provides medically related services and therefore, is entitled to minimum wage and overtime pay, if applicable, for that week.

Home Health Employers Should Review Pay Policies

With approximately fifteen months to prepare for the January 1, 2015 effective date of this Final Rule, employers of home health care workers should take time now to review compensation and recordkeeping practices. In particular, determine how you will track worker hours to ensure that you pay minimum wage for all hours worked and an overtime premium for all hours in excess of 40 per workweek. Learn the rules for paying in-home workers for time spent waiting, sleeping and traveling, as summarized on the DOL's Fact Sheet 79D - "Hours Worked Applicable to Domestic Service Employment Under the FLSA." Finally, prepare to update and communicate new pay policies to employees through your employee handbook, intranet policy portal and/or in-person training.

For questions regarding this update, please contact

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