OAJ Employment Law Section Article January 2016

Appeals Court Wage Ruling Is Major Victory For Home Care Workers

By: Richard Bush, Esq.

The U.S. Court of Appeals for the D.C. Circuit recently issued a unanimous opinion upholding the Department of Labor's 2013 regulation extending minimum wage and overtime protections to home care workers employed by third-party employers. The case, *Home Care Assn. of America v. Weil*, 799 F.3d 1084 (D.C. Cir. 2015), involved the DOL's interpretation of the "companionship service" and "domestic services" exemptions from the Fair Labor Standard Act. The exemptions apply to so called "companionship" workers and live-in domestics who provide in home care to individuals unable to care for themselves due to age or infirmity.

The FLSA gave the DOL authority to issue regulations defining the details and scope of the exemptions. When the DOL first issued regulations in 1975 it limited the exemptions to services provided in private homes. However, it allowed the exemptions to be used not only by private individuals receiving care but also third-party employers in the business of providing home care.

In 2007 the U.S. Supreme Court addressed a challenge to the 1975 regulations brought by a home care worker who argued that Congress never intended the exemptions to apply in favor of third-party employers. *Long Island Care at Home, Ltd. v. Coke*, 551 U.S. 158 (2007). The *Coke* court ruled against the worker, holding that the DOL's authority to define the details of the exemption included deciding whether or not third-party employers were covered.

After years of debate the DOL reversed its position. In October 2013 the DOL issued a regulation stating that third-party employers could no longer avail themselves of the exemptions, thereby extending minimum wage and overtime provisions to home care workers employed by third-party businesses. In doing so, the DOL pointed to the fundamental changes in the home care industry since the 1970s, when many individuals with significant care needs were served in institutional settings and when typical companionship workers were akin to "elder sitters" who did not provide care for a living. Over the decades, demand for in home care grew, and more individuals received skilled services in their homes rather than in nursing homes and other institutions. Today typical home care workers employed by third-parties are professional care givers, with training or certification, who perform services as a vocation for agencies who profit from their services.

With the new regulation, the tables were turned. A trade group of home care agencies challenged the regulation, claiming that the DOL had no power to prevent third-party employers from invoking the exemptions and that the new regulation was arbitrary and unreasonable. The trade group prevailed in the D.C. District Court, which struck down the new regulation.

But the Court of Appeals unanimously reversed. The appeals court emphasized that Congress left it up to the DOL to define the scope of the exemption. Further, the DOL reasonably recognized the fundamental changes in the home care industry. The DOL also reasonably rejected the contention that providing FLSA rights to home care workers would harm care

recipients and increase institutionalization. Instead, the DOL reasonably concluded that the new rule would equalize wage protections with other workers, attract a more qualified and stable workforce and improve the quality of care.

The decision is a great victory for home care workers, who are among the lowest paid workers in America, frequently work long hours at difficult jobs, and are subject to high turnover, burnout, and economic strain.

The battle is not over yet. The trade group has asked the U.S. Supreme Court to review the Court of Appeals ruling. While the Supreme Court may or may not eventually review the case, it did, on October 6, 2015, deny the trade group's request for a stay, allowing the new regulations to go into effect. So, as of now, home care workers finally have the same basic wage protections as those performing similar care services outside the home.

WEBSITE ARTICLE (HOME CARE WORKERS)
Rick/W&H LAWS & BRIEFS/home care workers ruling of 10-06-15