

THOUGHT LEADERSHIP**Service**

Labor & Employment

Professional

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LEGAL UPDATES

PUBLISHED: AUGUST 26, 2015

Appeals Court Sides with DOL on Companionship Exemption

The U.S. Court of Appeals for the District of Columbia Circuit ruled on August 21, 2015, that the Department of Labor's proposed regulations on the federal companionship exemption were a proper exercise of the department's regulatory discretion. The court in *Home Care Association of America v. Weil* reversed the decision issued by District Court Judge Richard Leon in early 2015. The regulations will take effect October 13, 2015, unless there is an appeal or a petition for rehearing.

The Proposed Regulations

The proposed regulations would require third-party employers to pay their home care employees minimum wage and overtime under the Federal Labor Standards Act (FLSA). The regulations also would severely restrict the type of work that exempt companions can perform for individuals in their private homes. Exempt caregivers employed directly by individuals or family members would be required to spend at least 80 percent of their working hours on "fellowship" and "companionship" activities (going for walks, playing games, watching television). They would be prohibited from engaging in any general household work, and they would be limited to spending no more than 20 percent of their time on "care" of the elderly or infirm person.

What This Means to You

These regulations would significantly impact the ability of elderly and infirm individuals to afford in-home care as an alternative to institutionalization. It is important to note that this ruling does not affect state and local law. We will continue to keep our readers updated on further developments.