## Proposed Changes to the Companionship and Live-In Worker Regulations Under the Fair Labor Standards Act

Background Information for Board Discussion

February 22, 2012

## Source: US Department of Labor Wage and Hour Division

While Congress expanded protections to “domestic service” workers in 1974, these Amendments also created a limited exemption from both the minimum wage and overtime pay requirements of the Act for casual babysitters and companions for the aged and infirm, and created an exemption from the overtime pay requirement only for live-in domestic workers.

Although the regulations governing exemptions have been substantially unchanged since they were promulgated in 1975, the in-home care industry has undergone a dramatic transformation. There has been a growing demand for long-term in-home care, and as a result the in-home care services industry has grown substantially. However, the earnings of in-home care employees remain among the lowest in the service industry, impeding efforts to improve both jobs and care. Moreover, the workers that are employed by in-home care staffing agencies are not the workers that Congress envisioned when it enacted the companionship exemption (i.e., neighbors performing elder sitting), but instead are professional caregivers entitled to FLSA protections. In view of these changes, the Department believes it is appropriate to reconsider whether the scope of the regulations are now too broad and not in harmony with Congressional intent.

**Proposed Changes to the Companionship and Live-In Worker Regulations**

On December 27, 2011 the Department published a [Notice of Proposed Rulemaking](http://webapps.dol.gov/FederalRegister/HtmlDisplay.aspx?DocId=25639&Month=12&Year=2011) (NPRM) to revise the companionship and live-in worker regulations for two important purposes:

* To more clearly define the tasks that may be performed by an exempt companion
* To limit the companionship exemption to companions employed only by the family or household using the services. Third party employers, such as in-home care staffing agencies, could not claim the exemption, even if the employee is jointly employed by the third party and the family or household.

Source: ANCOR

*DOL to Release Proposed Rule to Revise Companionship Regulations*

The U.S. Department of Labor's Wage and Hour Division will publish this week a [Notice of Proposed Rulemaking (NPRM)](http://www.dol.gov/whd/flsa/CompanionshipNPRM.pdf%22%20%5Ct%20%22_blank) that would extend the Fair Labor Standards Act's minimum wage and overtime provisions to workers who provide in-home supports for individuals with disabilities and the elderly.

DOL's [web page](http://www.dol.gov/whd/flsa/companionNPRM.htm%22%20%5Ct%20%22_blank), where the announcement is posted, says the NPRM "will revise the companionship and live-in worker regulations under the Fair Labor Standards Act (FLSA) to more clearly define the tasks that may be performed by an exempt companion, and to limit the companionship exemption to companions employed only by the family or household using the services. In addition, the Department proposes that third party employers, such as in-home care staffing agencies, could not claim the companionship exemption or the overtime exemption for live-in domestic workers, even if the employee is jointly employed by the third party and the family or household."

When Congress expanded FLSA to "domestic service" workers in 1974, its amendments created a limited exemption from minimum wage and overtime pay requirements for casual babysitters and companions for the elderly and infirm and created an exemption from the OT requirement for live-in domestic workers.

Other Resources

*DOL website on NPRM*

<http://www.dol.gov/whd/flsa/companionNPRM.htm>

*USA Today articles on DOL’s NPRM*

[1. http://www.usatoday.com/news/washington/story/2012-02-15/home-health-care-turnover-quality/53109424/1](http://www.usatoday.com/news/washington/story/2012-02-15/home-health-care-turnover-quality/53109424/1)

[2. http://www.usatoday.com/news/washington/story/2012-02-15/home-health-care-minimum-wage/53110228/1](http://www.usatoday.com/news/washington/story/2012-02-15/home-health-care-minimum-wage/53110228/1)

*Code of Federal Regulations Relating to Labor Wage And Hour Division, Department Of Labor*

<http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&tpl=/ecfrbrowse/Title29/29cfr785_main_02.tpl>