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On August 21, 2015, in *Home Care Association of America v. Weil*, the U.S. Court of Appeals for the D.C. Circuit issued a ruling with significant implications for home health care providers who take advantage of the companionship services exemption to the minimum wage and overtime requirements of the Fair Labor Standards Act (FLSA). In 2013, the DOL issued a new rule providing that third party employers of home health care workers could no longer use the companionship exemption. That rule was to take effect on January 1, 2015. The rule also significantly narrowed the definition of “companionship services.” The rule was put on hold in December 2014 and January 2015 when a federal trial court issued a ruling vacating the “third-party employment” provision of the new rule and rejecting the DOL’s narrower definition of “companionship services.” In *Weil*, however, the Court of Appeals reversed the lower court’s decision, which means that the new rule is now back in effect.

It is unclear yet whether the D.C. Circuit decision will be appealed and whether, if appealed, enforcement of the rule would be stayed during the course of the appeal. It is also not entirely clear how quickly or to what extent the DOL will seek to enforce the rule now that the appellate court has effectively reinstated the rule. Previously, in late 2014, the DOL announced that it would not bring enforcement actions under the new rule until after June 30, 2015, and that, from July 1, 2015 through the end of 2015, it would use “prosecutorial discretion” to determine whether to bring enforcement actions against employers, based on employers’ good faith efforts to bring their home care programs in compliance with the new rule. Hopefully, the DOL will provide further guidance regarding enforcement of the newly reinstated rule in the coming weeks. Regardless of the DOL’s enforcement plans, providers should be aware that, unless enforcement of the rule is stayed as part of an appeal, there is also a potential for liability for non-compliance with the rule through private actions filed in court.

Vorys and OPRA will continue to keep OPRA updated on the status of the *Weil* case and any pronouncements from the DOL regarding enforcement of the companionship rule. In the meantime, if you have specific questions as to how this decision relates to your agency, members are reminded that they can use their 2 hour OPRA annual member benefit with the Vorys law firm by contacting Suzanne Scrutton at 614.464.8313.