



DOL set to begin enforcing home care workers overtime rule

October 29, 2015

The Department of Labor (DOL) will begin enforcing its home care worker wage rule on November 12, 2015. Enforcement was delayed after the D.C. District Court invalidated the rule. However, on appeal, the D.C. Circuit Court reversed the lower court's ruling but automatically stayed its ruling for 52 days (until October 13, 2015) to allow plaintiffs to file a petition for rehearing en banc. Plaintiffs filed petitions to both the Circuit Court and the U.S. Supreme Court to further delay the Circuit Court's ruling, but both requests were denied. As a result, the Circuit Court's ruling went into effect on October 13, 2015.

The rule covers all home care workers, including live-in workers, who are employed by a third party, such as a home health care agency, regardless of their job duties. The rule also applies to workers who are employed directly by the consumer or consumer's family to primarily perform medical or domestic duties that benefit other household members.

Under the rule, the only workers who remain exempt from the Fair Labor Standards Act's (FLSA) minimum wage and overtime provisions are those employed directly by a consumer or consumer's family to provide companionship services such as playing cards, visiting with neighbors and taking walks. It is estimated that the rule will extend the FLSA's minimum wage and overtime protections to more than two million additional workers.

Although the DOL will begin enforcement on November 12, it will exercise prosecutorial discretion until December 31, "with particular consideration given to the extent to which States and other entities have made good faith efforts to bring their home care programs into compliance with the FLSA since the promulgation of the Final Rule."

Employers may also be subject to private lawsuits. They should act quickly to bring their home care programs into compliance with the rule as soon as possible to demonstrate good faith efforts and reduce the risk of exposure to private suits.

