

Alert: No Overtime Or Minimum Wage For Companionship Services

June 12, 2007

In a unanimous decision, the United States Supreme Court ruled this week that employees providing companionship services are exempt from the Fair Labor Standards Act and not entitled to overtime or a minimum wage under federal law. This ruling will directly affect an estimated one million companionship workers employed by home health agencies in the United States today.

The decision, [*Long Island Care at Home, Ltd. v. Coke*](#)^[1], interpreted the Fair Labor Standards Act's exemption for certain individuals employed in domestic service. According to the Act, "employees employed in domestic service employment to provide companionship services for individuals who are unable to care for themselves" are not subject to the federal overtime and minimum wage requirements. However, it was unclear until now whether the exemption applies to domestic service workers employed by a third-party agency, in addition to those hired directly by a family requiring their services.

A Department of Labor regulation states companionship workers who are employed by an employer or agency other than the family or household using their services are included within the FLSA's definition of domestic service workers providing companionship services for individuals who (because of age or infirmity) are unable to care for themselves. The Supreme Court referred to this part of the DOL regulation as the "third-party regulation." The Supreme Court's decision upholds the validity of this regulatory interpretation.

Coke, a companionship worker, filed a lawsuit against her former employer seeking unpaid wages and claiming the FLSA exemption does not apply to individuals employed by third-party agencies. Coke challenged the enforceability of Department of Labor regulation, arguing it was not binding as law. The Second Circuit agreed with Coke's arguments and found the regulation to be unenforceable. While the case was on appeal to the Supreme Court, the DOL issued an updated interpretation and explanation of the domestic service exemption. Based on the explanation, the Supreme Court returned the case to the Second Circuit for reconsideration. However, the Second Circuit did not find the updated information persuasive and again held that the regulation was unenforceable. Long Island Care at Home asked the Supreme Court to review the lower court's decision. The Supreme Court overruled the Second Circuit and upheld the DOL's regulation and interpretation.

The DOL, as a federal administrative agency is granted the power to issue regulations and "fill in gaps" in legislation through its regulations and definitions. On three occasions in the last fifteen years, the DOL has considered narrowing the third-party regulation, but has thus far not done so. Justice Breyer, who authored the Court's unanimous opinion, explains that the DOL's expertise on the FLSA means its regulations on the subject matter should be given deference by the courts. Although the narrow issue addressed by the Court in this suit was the validity and binding effect of a federal administrative agency's regulation, the Supreme Court's holding has broad implications for employers of companionship workers and those employees. Based on this case,

employees who provide companionship services are included in the FLSA statutory exemption, regardless of who is paying them for these services. So, under federal law (some state laws are more protective), employers are not required to pay companionship workers the federal minimum wage or provide compensation at time and a half the regular rate for overtime hours worked.

^[1]See the Spring 2007 “About Management” for further information regarding the district and appellate court rulings.