



National Employment Law Project

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NELP Files *Amicus* Brief in Home Health Care Case That Threatens To Strip Low-Wage Pennsylvanians of Their Right to Be Paid the Minimum Wage and Overtime

New York-Last week, NELP filed an *amicus* brief in the Pennsylvania Supreme Court for AARP, the SEIU and the Pennsylvania AFL-CIO to support a Pennsylvania Commonwealth Court ruling that home health care workers employed by agencies in PA are entitled to be paid the minimum wage and overtime for their work.

Home health care workers perform some of the most physically and emotionally demanding jobs in our economy. Many home health care workers work in excess of the regular eight-hour work day and the 40 hour work-week and do not receive minimum wage or overtime for all hours worked. A recent U.S. Supreme Court decision, *Long Island Care at Home v. Coke*, 127 S.Ct. 2339 (2007) affirmed the exclusion of these home health aides from the federal wage protections most workers take for granted.

Now, **Bayada Nurses Incorporated** brings a legal challenge to the stronger protections afforded to home health care workers in Pennsylvania. Unlike federal law, Pennsylvania's Minimum Wage Act has clear statutory language covering all agency-employed domestic workers, including all agency-placed home health care workers. Pennsylvania joins approximately twenty other states in providing better protections for agency-employed home health care workers.

Bayada Nurses brought its challenge to the Pennsylvania regulation by arguing that its individual consumer clients (who are exempt under PA law from paying minimum wage and overtime to home health care workers) jointly employed Bayada's employees, thereby affording Bayada access to the exemption as well. Bayada also argued that the PA court should follow federal interpretation. The decision in the lower court, to be heard in the PA Supreme Court once the briefing is complete, is *Bayada Nurses Inc. v. Dep't of Labor & Industry*, 958 A.2d 1050 (Pa. Commwlth. 2008).

NELP's brief argues that there are strong public policy bases for Pennsylvania's Department of Labor and Industry's regulation which specifically requires agencies to pay their home health care workers minimum wage and overtime pay:

- The Bureau of Labor Statistics predicts that in the years up to 2014, home health care will be the fastest growing occupation in the country. Without good wages for these jobs, the service industry will not be able to reach its potential as a driving force in our country's economic growth.
- One in five home health care workers lives below the poverty line and large numbers receive food stamps. A recently released a state-by-state survey of wages found that the average hourly wages of home health care workers are low enough to qualify workers for public assistance in 29 states.

To view the brief, click here: <http://www.nelp.org/page/-/Justice/BayadaHomeHealthBrief2008.pdf>

NELP works closely with our partners to advocate for living wages for these important workers.
http://www.nelp.org/site/issues/category/industry_strategies

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