NELP NATIONAL EMPLOYMENT LAW PROJECT

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Home Care Association of America v. Weil

And What it Means for Home Care Worker Rights

A lawsuit brought by home care industry groups has created uncertainty about the status of the United States Department of Labor's (US DOL) companionship rules change. On January 14, 2015, a U.S. District Court judge in Washington, D.C. struck down US DOL's revised definition of exempt companionship services. This ruling follows one in late December invalidating DOL's new third-party employer exemption. US DOL has appealed the judge's ruling and has been granted an expedited appeal schedule. The DC Circuit could rule on the appeal as soon as this spring.

Employers and states should continue to take steps to implement wage protections while the case is pending for several reasons:

- Legally, US DOL is on strong footing as it issued the regulations with explicit authority from Congress and the rules properly interpret the law. US DOL conducted a full notice-and-comment process in implementing the rules, accepting and considering tens of thousands of comments from the public, and provided for an unprecedented 15-month implementation period specifically to afford employers and states the time to assess the needs of their workforces and the consumers they serve and to budget and plan accordingly. If US DOL prevails in court and employers and states have not taken action to implement the rules, they will be unprepared to comply with the new rules when they go into effect.

- It is unclear to what extent the District Court judge's decision applies to all jurisdictions in the country. This means that workers could bring enforcement actions seeking minimum wage or overtime pay under federal law in other parts of the country.[1]

- Employers and states also face liability under some states' laws. While state minimum wage and overtime laws have not been aggressively enforced in the home care industry in the states where workers have coverage, there has been a recent uptick in litigation under state law against private employers.[2] And, in reviewing US DOL joint employment guidance issued this past summer, states may conclude that they are a joint employer of workers in state-funded programs under state laws and must pay workers overtime and for travel time.

- Restrictive approaches that have been proposed by some state programs, such as strict caps on workers' hours with no or limited exceptions, or prohibitions on workers serving more than one consumer per day, may cause consumers to lose the services they need to remain in their communities. Such restrictive measures could violate Title II of the Americans with Disabilities Act (ADA) and Olmstead v. L.C. (1999), a Supreme Court decision interpreting the ADA's requirements, which prohibit state policies that place people at serious risk of institutionalization, as well as states' due process requirements.

- Finally, paying workers less than the minimum wage for their work hours, and not paying an overtime premium after 40 hours a week, benefits no one. Low pay leads to burnout and high turnover and compromises care, which in turn create economic strains on the home care system. Poverty-level wages force workers to rely on public assistance, including on Medicaid, the very system that pays for most home care services. Many states have already recognized the need to raise standards, and extending basic wage protections is a key element of that process. And cost impacts may be significantly less than projected because CMS reimburses states for at least half of their costs, including for travel time and overtime premium rates.

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For more information on the companionship rules change, visit:
http://www.nelp.org/page/content/state_chart_companionship
or http://phinational.org/campaigns/home-care-workers-deserve-minimum-wage-protection

Endnotes

1. The district court decision does apply to the parties to the case, wherever they operate, however.
2. See, for example, Moreno v. Future Care Health Servs., Inc., 43 Misc. 3d 1202(A), 2014 N.Y. Misc. LEXIS 1273, 2014 NY Slip Op 50449(U) (N.Y. Sup. Ct. 2014); Melamed v. Americare Certified Special Serv., Inc., 2014 NY Slip Op 33296 (U) (N.Y. Sup. Ct. 2014); Andryeyeva v. New York Health Care, Inc., (Civil Index No. 14309/11) (N.Y. Sup. Ct. 2013); Gilkes v. Caring People, (Index. No. L-2617-13) (N.J. Sup. Ct. 2013); Bayada Nurses, Inc. v. Com., Dept. of Labor and Industry 607 Pa. 527, 8 A.3d 866 (Pa.2010).