

DOL PROPOSES CHANGES TO FLSA REGULATIONS FOR IN-HOME CAREGIVERS



The U.S. Department of Labor (DOL) has proposed changes to the Fair Labor Standards Act (FLSA) regulations for workers who provide in-home care. Currently there is an estimated two million in-home caregivers who tend to those in need of assistance. Under present FLSA guidelines, these workers are exempt from minimum wage and overtime. The Fair Labor Standards Act was passed in 1938. Its intention was to safeguard employees from not being compensated fairly for regular working hours as well as working beyond the 40-hour limit in a given week. The FLSA additionally meant to hinder imbalanced competition among businesses with companies saving funds by paying workers below a reasonable wage amount. At the time, workers who provided “domestic service,” such as cooks, housekeepers, maids and gardeners, were not covered, unless employed by an FLSA-regulated business (i.e. a gardener working for a landscaping company). In 1974, the Fair Labor Standards Act was amended to include domestic workers. However, babysitters and “companions” for the elderly and infirmed were exempt from minimum wage and overtime, and live-in domestic workers were exempt from overtime. In its proposal, the DOL noted that, while the FLSA has essentially stayed the same since the 1974 amendments, the demand for in-home care and the industry itself has grown exponentially. The DOL hoped to “more clearly define” the duties that an exempt companion would be performing, as well as limit the “companionship exemption” to workers employed only by the family or household utilizing the provided assistance. The proposal specifically cited the modification of how “domestic service employment” and “companion services” would be defined. According to the DOL proposal, the tasks handled by a companion would be limited to “fellowship and protection,” including activities such as playing cards or other hobbies, watching television, visiting friends or neighbors, or taking walks. The worker would be allotted “incidental intimate personal care services,” like dressing or driving to appointments, as long as these services do not exceed 20 percent of the total hours worked in a week. Perhaps more significantly, third-party employers (i.e. agencies who staff in-home workers) would not be allowed to claim the minimum wage and overtime exemptions. Even if a caregiver is employed by both an agency and the family/household, and the household claims the exemptions, the FLSA would not permit the third-party employer to claim the exemptions as well. In a press release from the DOL, Secretary of Labor Hilda L. Solis said, “The care provided by in-home workers is crucial to the quality of life for many families. The vast majority of these workers are women, many of whom serve as the primary breadwinner for their families. This proposed regulation would ensure that their work is properly classified so they receive appropriate compensation and that employers who have been treating these workers fairly are no longer at a competitive disadvantage.”