THE DOL STRIKES BACK: DEPARTMENT OF LABOR WINS COMPANIONSHIP SERVICES CASE

On August 21, 2015, the Court of Appeals for the D.C. Circuit (the "Court") issued a ruling in Home Care Association of America v. David Weil, also known as the "companionship services lawsuit." Unfortunately, it is more bad news for the home care industry. The Court ruled that the Department of Labor ("DOL") has the authority to make the proposed changes to the companionship services exemption and that the DOL's proposed changes are based upon a reasonable interpretation of the statute. This means the rule that prohibited third-party employers from relying upon the exemption is valid.

The main issue in the Court's ruling is whether the trial court correctly concluded that the DOL lacked authority to exclude domestic service employees who were employed by third parties from coverage under the exemption. The trial court found that the Fair Labor Standards Act ("FLSA") was clear and did not allow the DOL the authority to revise the exemption to exclude individuals employed by third parties. The Court noted that in a previous case,Evelyn Coke v. Long Island Care at Home, the U.S. Supreme Court had expressly concluded that the FLSA was ambiguous and that the question regarding whether third-party employers can rely on the exemption was an issue for the DOL to decide through rulemaking.

Once the court concluded that the DOL had the authority to promulgate the regulation, the only remaining question was whether the DOL's revised regulation was reasonable. This step of review tends to be very deferential to the agency. The Court found the DOL had considered the impact of the changes to providers, workers and patients. The Court specifically noted that the DOL had considered data from 15 states that had eliminated the companionship exemption. Based upon the DOL's review, the regulation was found to be a reasonable exercise of the DOL's authority and should be upheld. The Court then reversed the trial court's ruling on the revised definition of companionship services because the providers lacked standing to challenge it.

PRACTICAL TAKEAWAYS

As a result of this ruling, third-party employers will not be able to rely upon the companionship services exemption. Home care providers who had continued to rely upon it as a result of the trial court's ruling must now revisit their scheduling practices. Providers must assess whether they can afford to pay employees they categorized as exempt companions overtime and, if not, how to reduce employee hours to avoid overtime.

It is not clear when the DOL will begin to require compliance with the new rule. They had previously given providers a grace period to achieve compliance. Perhaps they may provide a similar grace period at this juncture. The bottom line is that providers should now revisit the impact of using non-skilled workers, such as home health aids, hospice aids and attendants, more than 40 hours a week as they will soon have to be paid overtime.

If you have any questions or would like additional information on this topic, please contact Robert W. Markette at (317) 977-1454 or rmarkette@hallrender.com or your regular Hall Render attorney.

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