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US District Court Ruling a Victory for Home Care Providers, but Challenges Remain Under New Minimum Wage and Overtime Rules

In a ruling on December 22, 2014, in the case of *Home Care Association of America et al. v. Weil*, the US District Court for the District of Columbia vacated a significant new regulation in the Department of Labor's (DOL) Final Rule concerning domestic service workers under the Fair Labor Standards Act (FLSA). The subject regulatory change makes the "companionship services" exemption unavailable to third-party employers of domestic service workers. In effect, home care service providers are responsible for paying minimum wage and overtime to their employees who provide domestic companionship services to seniors and individuals with disabilities. US District Court Judge Leon, however, writing for the Court in *Weil*, fervently rejected the DOL's proposed change as a "thinly-veiled effort to do through regulation what could not be done through legislation," with the DOL's "conduct bespeak[ing] an arrogance to not only disregard Congress' intent, but seize unprecedented authority to impose overtime and minimum wage obligations in defiance of the plain language of [the statute]."

As a result of the ruling, the companionship services exemption will continue to be available to home care service providers, subject to the DOL's possible appeal of the ruling and one other important caveat: the ruling does not address the change in the Final Rule to the definition of "companionship services," which now only includes "care" services (such as dressing, grooming, feeding, bathing, meal preparation, etc.) if they do not exceed 20 percent of the employee's total hours worked in a workweek per consumer. Prior to June 30, 2015, the date on which DOL enforcement of the Final Rule will commence, home care providers may need to consider whether the "companionship services" exemption applies to their employees in light of the 20 percent restriction and also stay alert to any DOL appeal of the ruling in *Weil*.

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