

## DOL's New "Companionship" Rules to Take Effect

Under regulations issued by the U.S. Department of Labor ("DOL") in 2013, the exception to minimum wage and overtime requirements for workers providing companionship services were dramatically narrowed. The regulations were delayed by litigation, but a recent U.S. Supreme Court decision has cleared the way for the regulations to go into effect.

### Background

Prior to 2013, federal law exempted workers providing companionship services from minimum wage and overtime requirements. This exception applied regardless of whether the worker was employed directly by a household or by a third party agency.

In 2013, the DOL promulgated new regulations that dramatically narrowed the companionship exception. Under the new rules, only those companionship workers who are employed directly by a household are exempt from minimum wage and overtime. Workers hired by third party home care agencies no longer qualify for the exception, meaning that they must be paid minimum wage and overtime. Additionally, the rules more narrowly define the duties that a companionship worker may perform. The new companionship exception was supposed to go into effect on January 1, 2015, but was delayed due to litigation challenging the exemption.

The delay, however, appears to be over. In 2015, the appeals court in Washington, D.C., ruled that the new regulations were lawful. Recently, the U.S. Supreme Court declined to hear a challenge to that decision, clearing the way for the new rules to go into effect.

### Practical Considerations for Employers

To qualify for the new companionship exception, the following conditions must be met:

1. The companionship worker is employed directly by a household, individual or family.
2. The companionship worker provides fellowship and protection for an elderly person with an illness, injury or disability who requires assistance

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caring for himself or herself.

3. The companionship worker does not assist the person with daily living activities that exceed 20% of the total hours worked per person and per workweek; if daily care activities exceed this 20% cap, overtime and minimum wage must be paid.

Notably, these changes bring federal rules more in line with existing Wisconsin law, which has never exempted companionship workers employed by a third-party agency from the minimum wage or overtime. Wisconsin employers should take this opportunity to ensure that their compensation policies conform to both federal and state law.

If you have any questions regarding this material or how to update your employment policies, please contact [Robert S. Driscoll](#) or your Reinhart attorney.

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