Healthcare Law Client Alert

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Electronic Dispatch

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SUPREME COURT APPROVES THE "COMPANIONSHIP EXEMPTION" FROM MINIMUM WAGE AND OVERTIME FOR HOME CARE WORKERS

Companies providing home health care can at long last breathe a sigh of relief. On June 11, 2007, the U.S. Supreme Court rejected a long-standing challenge to a regulation under the Fair Labor Standards Act ("FLSA," 29 U.S.C. § 201 et seq.) that exempts home care workers from the minimum wage and overtime requirements of the FLSA. *Long Island Care At Home, Ltd. v. Coke*, No. 06-593 (S. Ct., June 11, 2007). If it had been determined that these workers were entitled to minimum wage and overtime, as a lower appellate court had previously held, the home care industry would have been subject to hundreds of millions of dollars in back and future compensation to its workers – the fastest growing but lowest paid segment of health care – in dozens of class action and/or collective action suits that were already pending.

Background

The FLSA's "companionship exemption" was thrown into question by Evelyn Coke, a retired home health care worker, who sued her former employer, Long Island Care At Home, Ltd., for failing to pay overtime (1½ times her regular rate) for weekly hours over 40. The Second Circuit Court of Appeals, which has jurisdiction over Federal actions arising in New York State, had agreed with Ms. Coke, and – twice – held that she was entitled to overtime pay. Id., 376 F.3d 118 (2004), and, after remand, 462 F.3d 48 (2006) (per curiam). Interestingly, the case arose after a personal injury lawyer, trying to assess Ms. Coke's damages after a traffic accident, noticed that she was not receiving overtime pay.

The employer relied on an "interpretive" regulation of the U.S. Department of Labor ("DOL"), 29 C.F.R. §552.109(a) that, for 30 years, has been applied to exempt all home care workers from premium overtime, even when employed by third-party providers or agencies. (A statutory section of the FLSA, 29 U.S.C. § 213 (a)(15), expressly exempts from overtime only those home care workers who are employed by the *patient's family* or household; the DOL's regulation filled in the "gap" by exempting those employed by *third parties*, as well). The Second Circuit had held the regulation to be inconsistent with the statute, particularly in view of the DOL's varying positions on this issue prior to 1974. Civil Rights groups had supported Ms. Coke's position, asserting that the exemption from overtime was designed to subjugate a heavily-minority classification of workers. Industry groups, by contrast, stressed that, due to the notoriously low Medicare reimbursement rates for the services performed by these workers, certified home care agencies who employ them are forced to operate on very small hourly profit margins, making the cost of overtime premiums prohibitive.

Unanimous Decision

In a unanimous decision, the Supreme Court upheld the DOL's regulation, finding that it appropriately addresses issues within the DOL's expertise and authority that were left open by Congress. The Court's view was bolstered by a recent "Advisory Memorandum" issued by the DOL (WH Advisory Memo No. 2005-1, Dec. 1, 2005) explaining and defending the regulation. The Supreme Court held that the regulation fell "well within" the DOL's statutory authority, and rejected asserted defects in the agency's rulemaking process.

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State Overtime Laws Still Applicable

Although home care workers are now clearly not subject to *Federal* minimum wage and overtime requirements, they may still be subject to separate *State* law overtime obligations. In New York, for example, home care employees (as other employees exempt under Federal law) are required to be paid 1½ times the state *minimum wage*, i.e., $7.15 per hour for all hours worked in excess of 40 per workweek. This sum, however, may still be significantly less than 1½ times the worker's individual hourly wage.

If you have questions about the "companionship exemption" or compliance with Federal or State wage/hour requirements, please contact:

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