



New U.S. Labor Secretary Proposes to Extend U.S. Minimum Wage Laws to Home Health Employees

November 8, 2013

After only being sworn in two weeks ago, the new U.S. Labor Secretary, Thomas Perez, has not wasted any time in setting up the goals he planned to obtain during his term, especially when it comes to minimum wage laws for home health care workers. . The new law will become effective in January of 2015, and will provide health workers, personal care aides, and certified assistants protection and coverage under the Fair Labor Standards Act (“FLSA”). Under the new law, minimum wage and overtime will be extended to approximately two million home health workers who currently assist the elderly and the disabled. Although the new rule has been a work in progress for the past two years, few substantive announcements have been made regarding it until now.

Perez envisions the law as “taking an important step toward guaranteeing that these professionals receive the wage protections they deserve while protecting the right of individuals to live at home.” In support of extending FLSA to home health workers, Perez explained such workers should be entitled to minimum wage and overtime pay because of the “vital services” they provide. Perez explained that the Federal exclusion was designed to exempt “fellowship and protection” type of services such as teenage baby-sitters. Accordingly, Perez opines that the application of the exemption to home health workers partially responsible for medical services in the home is an error that must be addressed.

The exemption of home health workers under FLSA to wage and overtime benefits is the result of the statute’s failure to define “companionship services.” The proposed rule comes as a response to the United States Supreme Court decision in *Long Island Care at Home vs. Coke*, 551 U.S. 158 (2007), where the Supreme Court interpreted “companionship” workers under the FLSA exemption extended to include home health workers.

The Labor Department has estimated that the 1.9 million home health workers that “direct[ly] care” for the elderly and disabled earned a median pay of \$9.70 per hour, or about \$20,000 per year (the federal minimum wage is currently \$7.75 per hour). The Labor Department also estimated that about 90% of these laborers are women and that nearly half of these employees are minorities.

Currently, twenty-one states and the District of Columbia have extended state minimum wage benefits to cover home health workers. Fifteen of those states also provide home health workers with overtime benefits.

In response to the FLSA revision, Republicans have expressed concerns that home health services may become too costly and possibly could result in less hours of employment for such workers. On the other side of the debate, Democrats are supportive that the rule will provide significant economic benefits to those workers.

If you or your company would like more information on employment law, contact James G. Ryan at jryan@cullenanddykman.com or via his direct line at 516-357-3750.

A special thank you to Melissa Cefalu, a law clerk at Cullen and Dykman, for her assistance with this blog post.