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The Companionship Services  
Is Lost –  
What's It Mean to You

## NOTE:

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# What Is the Companionship Services Exemption?

# The Companionship Services Exemption

It is a complete exemption from minimum wage and overtime pay under the federal Fair Labor Standards Act.

# The Companionship Services Exemption

## Elements:

- The services provided must be “companionship services”;
- General household work may not exceed 20% of the total weekly hours;
- Must be non-trained personnel; *and*,
- Services must be provided in or about the private home of a client.

# Why Has the Exemption Been Important?

## What's Happened Now?

On October 1, 2013, the US Dept of Labor (DOL) published a final regulation which prohibits third party employers, such as home care agencies, from using the exemption beginning January 1, 2015.

# Download the New Regulation and DOL's Comments

- In the October 1, 2013,  
Federal Register
- [www.gpo.gov/fdsys/](http://www.gpo.gov/fdsys/)



## What Changes Were Made

- Prohibited use by third-party employers
- Greatly narrowed what is companionship services
- Changed recordkeeping required of employers of live-in domestic service employees

# Why Did DOL Do This?

# Who Can Still Use the Exemption?

- Clients
- A member of the client's family
- A member of the client's household

# What Does Loss of the Exemption Mean for My Agency?

- Beginning January 1, 2015, must pay caregivers:
  - Minimum wage
  - Overtime pay
- Impact on live-ins

# How Is Companionship Services Re-Defined?

“... the provision of fellowship and protection for an elderly person or a person with an illness, injury, or disability, who requires assistance in caring for himself or herself ...”

## What is “Fellowship?”

“... to engage the person in social, physical, and mental activities, such as conversation, reading, games, crafts, or accompanying the person on walks, errands, to appointments, or to social events.”

## What is “Protection?”

“... to be present with the person in his or her home or to accompany the person when outside of the home to monitor the person’s safety and well-being.”

## Limited Care Is Allowed

“The term companionship services also includes the provision of care if the care is provided attendant to and in conjunction with the provision of fellowship and protection and if it does not exceed 20 percent of the total hours per person and per workweek.”



## “Care” Defined

“...The provision of care means to assist the person with activities of daily living (such as dressing, grooming, feeding, bathing, toileting, and transferring) and instrumental activities of daily living, which are tasks that enable a person to live independently at home (such as meal preparation, driving, light housework, managing finances, assistance with the physical taking of medications, and arranging medical care).”

# Significance of the 20% Limitation

- If the individual needs much assistance with ADLs and IADLs, the caregiver is entitled to minimum wage and overtime pay no matter who is the employer.

# Domestic Household Work

- Companionship Services does not include domestic services performed primarily for the benefit of the other members of the household.

# Medically Related Services

- Companionship Services does not include “medically related services.”

## Medically Related Services

- “... The determination of whether services are medically related is based on whether the services typically require and are performed by trained personnel such as registered nurses, licensed practical nurses, or certified nursing assistants; the determination is not based on the actual training or occupational title of the individual performing the services.”

# Pulling It Together

- Companionship services is:
  - Primarily fellowship and protection plus not more than 20% care (ADLs and ADLs)
  - No services primarily for other members of the household
  - No medically related services
- If any of these violated, the caregiver must be paid minimum wage and overtime pay no matter who is the employer

# The Impact for Registries

# How to Count Hours Worked Beginning January 1, 2015

- Sleep time
- Travel time
- Meal periods
- Break time
- Off duty time



# Sleep Time

- When required to be on duty for less than 24 hours  
The government considers it working time.
- When required to be on duty for 24 hours or more  
By agreement with the employee, can exclude not more than 8 hours if:
  - Adequate sleeping facilities
  - Can usually have 8 hours sleep
  - Must pay for interruptions
  - If cannot get at least 5 uninterrupted hours of sleep the entire time is working time

# Travel Time

- Home to work travel
- Travel during the work day
- One day assignment in another city
- Overnight Travel

## Meal Periods

- Bona fide meal periods do not count as hours worked.
- Must be:
  - Completely relieved of all duties for a period of at least 30 minutes for the purpose of eating a meal
  - Allowed to take his/her meal without interruption for work.

## Break Time

- Breaks of less than 20 minutes are hours worked
- If greater than 20 minutes, whether or not the break will count as hours worked depends on the caregiver's freedom

## Off Duty Time

- If completely relieved of all duties and free to use the time effectively for the caregiver's own purposes, the time is not hours worked.
- The caregiver should be told in advance that he/she may leave the premises and will not have to resume work until a definite, stated time.

## Using Telephony

- Be sure you account for all hours worked.

# The Impact of State Law

# What About Direct Hire and the Underground Economy?

- DOL does not believe these will be expanded



# What About Joint Employment with the Client/Family/Household?

- “Joint employment” refers to a situation in which employment by one employer is not completely disassociated from employment by another employer.
- Both are liable for wage and hour obligations
- If it exists between your agency and a client/family/household, they are relieved of the obligation to pay minimum wage and overtime pay, but apparently your agency is not.

# Live-In Domestic Service Employees

- DOL uses the term “live-in” differently than it is used in home care
- DOL means an employee who resides on the employer’s premises on a permanent basis or for extended periods of time.
- Beginning January 1, 2015, third-party employers may not use this exemption
- Doubtful that home care agencies can use it now.

# Options to Deal with Loss of the Exemption

- Limit hours worked to avoid overtime
- Pay minimum wage to reduce the cost of overtime
- Pass overtime cost to the client/family

# Options to Deal with Loss of the Exemption

- Recognize the impact of the loss of the exemption is not as great as commonly thought
- Talk with agencies in states where overtime already must be paid

# Options to Deal with Loss of the Exemption

- Is adopting a registry model viable?

## A Final Thought

- Loss of the exemption will change how you do business. It does not jeopardize your agency's existence
- Adapt to the change

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