

Blog Post

The FLSA Companionship Services and Live-In Exemptions May Be Revived for Home Care Agencies

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Home care agencies and other third-party employers may soon be able to reclaim the Companionship Services and Live-In Exemptions for caregivers and other domestic service employees, after more than a decade of exclusion, due to a recent proposal by the U.S. Department of Labor, Wage and Hour Division (DOL), to rescind its [2013 final rule](#) governing these exemptions under the Fair Labor Standards Act (FLSA). Specifically, in [Field Assistance Bulletin No. 2025-4](#) (FAB 2025-4), the DOL's Wage and Hour Division directs field staff to discontinue enforcement of the 2013 final rule and urges the restoration of the Companionship and Live-In Exemptions for third-party employers and a return to a broader scope of covered companionship services.

While the 2013 final rule has not yet been officially rescinded, the DOL has signaled in its [proposed rule](#) (dated July 2, 2025) that the 2013 final rule “might not reflect the best interpretation of the FLSA and might discourage essential companionship services by making these services more expensive.” Notably, the 2013 final rule was delayed by litigation brought on behalf of home care agencies challenging its legality; as a result, it did not actually take effect until October 13, 2015. The DOL is now currently proposing to scrap the 2013 final rule and return to

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its 1975 regulations. For third-party employers in the home care industry, the ability to once again rely upon the Companionship and Live-In Exemptions may be revived soon.

Background

The FLSA includes the following exemptions for certain categories of domestic service employees:

1. The Companionship Exemption: An exemption from the FLSA's minimum wage and overtime pay requirements for employees who "provide companionship services for individuals who (because of age or infirmity) are unable to care for themselves." 29 U.S.C. 213(a)(15)
2. The Live-In Exemption: An exemption from the FLSA's overtime pay requirement (but not the minimum wage requirement) for "any employee who is employed in domestic service in a household and who resides in such household." 29 U.S.C. 213(b)(21)

Under the FLSA, "companionship services" means the provision of fellowship and protection for an elderly person or person with an illness, injury, or disability who requires assistance in caring for himself or herself. While some companions (such as home health aides) may be live-in workers, "domestic service in a household" is a broader term intended to include services by babysitters, cooks, housekeepers, nannies, and others who reside in the private home where they work, either permanently or for extended periods of time. Under the Live-In Exemption, domestic service employees must be paid at least minimum wage for all hours actually worked, but are exempt from overtime pay.

In 2013, the DOL issued a final rule that significantly narrowed the scope of the above exemptions for companions and live-in domestic workers. Of particular note, the 2013 rule prohibited third-party employers, such as home care agencies, from claiming the Companionship or Live-In Exemptions.

Third-party employers were not permitted to claim either exemption even when the employee was jointly employed by the third-party employer and the individual, family, or household using the services. However, the individual, family, or household was able to claim any applicable exemption. Further, the 2013 rule explained that “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% of the total hours worked per person and per workweek**. The rationale behind this portion of the rule was that the DOL believed it was appropriate for “companionship services” to be primarily focused on the provision of fellowship and protection, with an allowance for **certain care services** to support clients in living independently in their homes. However, employers of direct care workers could not claim the exemption if the caregiver provided care for more than 20% of the hours worked in the workweek.

Updated Home Care Enforcement Guidance

Pursuant to the FAB 2025-4, entitled “Home Care Enforcement Guidance,” dated July 25, 2025, the Wage and Hour Division has suspended investigations and enforcement actions against any third-party employers claiming the Companionship or Live-In Exemptions. Additionally, exempt “companionship services” will include the provision of fellowship, protection, and care, and investigators are directed not to consider any limits on the amount of time in which home care workers spend providing “care” when determining whether a home care worker is providing companionship services. Thus, the 20% cap from the 2013 final rule — prohibiting an employer from claiming the exemption for any caregiver who spends more than 20% of the total hours worked in a workweek on the “provision of care” — will no longer be enforced. According to the FAB, “care” may include duties related to dressing, grooming, feeding, bathing, meal preparation, light housework, managing finances,

and arranging medical care, among other activities of daily living. As such, caregivers may now qualify as exempt pursuant to the Companionship Exemption, notwithstanding the amount of time spent providing care in any given workweek.

What Does This Mean for Employers?

At least in connection with wage investigations by the DOL, home care industry employers can breathe a sigh of relief. However, until the 2013 final rule is actually rescinded, third-party employers should tread carefully, as they could remain susceptible to FLSA claims by private litigants. Third-party employers should also remain mindful of any applicable state or local laws that may provide for a narrower exemption. While the proposed rulemaking plays out (the comment period just ended on September 2), home care industry employers can begin to evaluate the status of their domestic service employees to determine whether the Companionship and/or Live-In Exemptions may apply in the near future.

For guidance in assessing the classification of your employees under the FLSA, please contact your Akerman attorney.

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