

CLIENT ALERT: Labor Department Delays Enforcement of Controversial Home Care Worker Overtime Law

Effective Date of New Rule Remains January 1, 2015, but full enforcement begins January 2016

The United States Department of Labor has announced that it will delay enforcement of its Home Care Final Rule, which extends minimum wage, overtime protection, and recordkeeping obligations to home care workers under the Fair Labor Standards Act of 1938 ("FLSA"). Under the new rule, direct care workers employed by third-party employers, such as home care agencies, will be subject to FLSA regulations. Workers employed solely by a family or individual may be covered by the new rule if they are performing medically-related services, which typically require training and are performed by medical personnel such as registered nurses, licensed practical nurses, or certified nursing assistants. Direct care workers who perform these services are excluded from the companionship services exemption. Companionship services are defined under the new regulation to include 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. Further, under the final rule, home care service providers who reside in an employer's home and are employed by an individual, family or household must be paid the federal minimum wage for all hours worked, but they will be exempt from overtime requirement. To qualify for the live-in service overtime exemption, a worker must live and sleep in the client's home for five consecutive days in a week.

Despite the DOL's announcement that it will delay enforcement of the new rule, the effective date remains January 1, 2015, and employers should plan to be in compliance by then. According to the DOL, the delay will be followed by a phased-in enforcement policy. From January 1, 2015 to June 30, 2015, the department will not bring enforcement actions against any employer that does not comply with the final rule's mandates. From July 1, 2015 to December 31, 2015, the department will exercise its discretion in determining whether to bring enforcement actions, giving strong consideration to the

extent to which employers have made good faith efforts to bring their home care employment practices into FLSA compliance. Throughout 2015, the department will continue to provide compliance and technical assistance to those who seek it.

Employers should contact their MBJ attorney with questions about the new regulations.

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