

New rules for home care workers move the ball forward

By Wendy Patton

New Department of Labor rules through the Fair Labor Standards Act (FLSA) are likely to help stabilize the home-care industry by ensuring more workers get fair wages and hours. A stabilized workforce means more consistency, less turnover and better skills, resulting in better care for the vulnerable people who depend on home-health aides and personal-care attendants to live independently in their homes.

The FLSA is sometimes referred to as the “wage and hour” law. It requires employers to pay at least the minimum wage and to pay overtime rates after 40 hours of work in a week. The new rules described in this issue brief were designed to extend these protections to workers long excluded under a 40-year old “companionship” exemption. Many excluded workers work in the home-care sector, serving Ohioans who are ill or elderly, or have disabilities.

The new rules make two major changes to the companionship exemption: **(1) they clarify and narrow what constitutes exempt “companionship services”, and (2) they provide that third-party employers, such as home-care agencies, will no longer be able to claim either the minimum wage or overtime exemption.** The companionship exemption for home-care workers will no longer be extended to those who serve a whole family instead of just one patient, who are providing services that require medical skill and judgment, or who are spending more than a fifth of their time assisting someone with the activities of daily living. The new rules also clarify who can claim a companionship exemption and who can’t (workers can, agencies or joint employers can’t). They require record keeping of workers’ hours under federal laws of the United States Department of Labor. Along with the new rules, the Department of Labor has clarified a method to determine the employer for a home-health worker who serves several patients, but gets a paycheck from a third party like the state Medicaid agency. This is important because it identifies who is responsible for keeping records of hours worked and ensuring pay. The new rules also clarify several issues for those working 24-hour shifts and sleeping at a client’s home, and for workers who live in a client’s home.

A federal district court has vacated the rules change but the Department of Labor has appealed that decision to a federal appeals court and a decision is expected within the next few months.

If the federal court decision is overturned, home-care workers in Ohio can look forward to full pay for hours worked and overtime pay (time and a half) for more than 40 hours per week.

Key findings

- New Department of Labor rules will provide wage and hour protection to home-care workers.
- Home-care workers will get paid for all hours worked and overtime pay for overtime work. New protections will improve working conditions and reduce turnover, factors that affect the quality of care.
- Kasich administration has just eliminated home-care workers’ right to bargain collectively for better wages and working conditions.