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Congressional Testimony: Home Care Industry Needs Minimum Wage Protections

Washington, DC – A nearly forty-year-old rule that exempts the nation’s 2.5 million home care workers from federal minimum wage laws could be revised under a Department of Labor proposal that would grant this burgeoning workforce the same wage protections other workers have relied on for decades.

In [testimony](#) today before a panel at the [House Committee on Education & the Workforce](#), the National Employment Law Project (NELP) explained that the DOL updates would help alleviate the critical challenges facing the home care industry, which include increased demand for affordable care, a rise in worker turnover, poverty-level wages and deteriorating conditions for care providers and recipients.

“The exclusion of millions of home care workers from basic minimum wage protections is undermining their work, the care consumers receive and the economy,” said **NELP Legal Co-Director Catherine Ruckelshaus**. “The Department of Labor’s proposal would apply minimum wage and overtime coverage to the people who get our grandmothers out of bed in the morning and ensure our disabled neighbors live as independently as possible. These are revisions to an outdated model that would be perfectly manageable for the home care industry and good for both consumers and workers.”

The exclusion dates back to 1974, when Congress extended the Fair Labor Standards Act to domestic workers but carved out two narrow exemptions for casual babysitters and “companions.” The legislative history shows that Congress meant only to exempt companions who were more like “elder sitters,” and who “are not regular breadwinners.” But the U.S. Department of Labor issued rules so broadly that today nearly all home care workers are swept into the companionship exemption.

The Department of Labor’s proposed rules would make four primary changes: (1) modernize the definition of what constitutes covered “domestic service employment” to add some additional job titles and take out some more outdated ones; (2) narrow the definition of exempted “companionship services” to mean “fellowship” and “protection,” aligning it more closely to what Congress intended in 1974; (3) eliminate the ability of third-party employers such as home care agencies to claim the exemption, and (4) change the record-keeping requirements for employers of live-in domestic workers to more closely align them with what other employers currently do.

The proposed changes come at a critical time. Over the next two decades, the U.S. population over age 65 will grow to more than 70 million. People are living longer, and the demand for caregiving is expected to grow significantly. An estimated 27 million Americans will need direct care by 2050, according to the Department of Health and Human Services. If recruitment and retention problems grow, labor shortages could fail to meet the growing need.

Additionally, the average national wage of \$9.34 per hour for this demanding occupation means that one in five workers lives below the poverty line, according to PHI, an advocacy group for the direct care workforce. In 29 states, the average hourly wages are low enough to qualify workers for public assistance, which burdens

already strapped states. Meanwhile, the Department of Labor projects that home care jobs will increase by nearly 1.3 million in 2010-2020. The industry is one of the top five fastest-growing in the country, and revenues and the number of establishments today are twice their size or more than in 2000.

Fifteen states already extend state minimum wage and overtime protections to some or all home care workers, including states with the nation's largest home care programs like New York, Illinois and Pennsylvania. In five more states and the District of Columbia, workers also already enjoy minimum wage protection, though not overtime.

"Home care is thriving in states where minimum wage coverage already applies to these workers, so arguments against the economic feasibility of these new rules just don't hold up. The bottom line is that home care is one of the fastest growing jobs in the nation and demand for these services is only going to keep rising. These are not jobs you can outsource. If we start providing home care workers a fair wage for their hard work it will benefit workers, the economy and consumers around the country," said Ruckelshaus.

The National Employment Law Project is a non-partisan, not-for-profit organization that conducts research and advocates on issues affecting low-wage and unemployed workers.

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