



For Immediate Release: December 23, 2014

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On the Federal Court Ruling on Minimum Wage And Overtime Protections for Home Care Workers

*Following is a statement from **National Employment Law Project Executive Director Christine Owens** on a decision from the U.S. District Court for the District of Columbia overturning part of a Department of Labor rules reform that extended wage protections to home care workers:*

“Our nation’s nearly two million home care workers, who labor day in and day out to care for seniors and people with disabilities, have been unfairly excluded from basic federal minimum wage and overtime protections for more than four decades. Updated regulations from the Department of Labor finally put home care workers on the path to gaining the same rights that almost all other workers enjoy. The D.C. District Court’s decision yesterday to vacate one section of the new rules is erroneous and regrettable, but fortunately, its impact will be relatively limited. The new home care regulations will go into effect on January 1, 2015 and will still cover most home care workers.

“The court sided with industry leaders, including the Home Care Association of America, the International Franchise Association, and the National Association for Home Care & Hospice, in vacating the DOL rule that says home care agencies cannot take advantage of the exemption under federal minimum wage and overtime laws, and that workers hired by an agency to “live in” with the client are covered by federal overtime.

“Fortunately, the ruling’s immediate impact will be limited. Most home care workers employed by third-party agencies will still be covered by federal minimum wage and overtime, because most perform duties that constitute covered ‘domestic service employment’ (as opposed to ‘companionship services’) in the new regulations.

“The plaintiffs’ opposition to the federal fair-pay rules is baffling, because many of the for-profit home care agencies represented in this lawsuit already operate in states where state minimum wage and overtime protections apply. This either suggests that they’re not taking the wage requirements seriously in those states, or that their claims of hardship and burden from having to comply with basic pay rules—laws that almost all other employers somehow manage to adhere to—are very much overstated.

“The District Court’s ruling unjustly permits for-profit home care agencies to claim that they are uniquely excused from the Fair Labor Standards Act, sending the message that home care workers’ work is not real labor. It is appalling that the \$90 billion home care industry, which has seen its revenues double in the last decade, would seek to avoid the most basic of labor protections for its employees, the right to minimum wage and overtime pay.

“The District Court decision cited the U.S. Supreme Court in ruling that the Department of Labor does not have the authority to extend minimum wage obligations to third-party agencies. In fact, the U.S.

Supreme Court's ruling in *Long Island Care at Home Ltd. v. Coke*, 551 U.S. 158 (2007) made clear that the Secretary of Labor is vested with broad policy-making latitude to determine the scope of the exemption, including 'whether to include workers paid by third parties within the scope of the definitions.' The Department of Labor acted well within that discretion in explaining that these exemptions were not intended to apply to for-profit corporations and other third-party employers, revising the rules to better reflect Congressional intent and significant changes to the industry.

"Home care workers provide the critical services that keep millions of Americans out of institutions, yet they are among the lowest-paid workers, with median hourly wages of \$ 9.61, placing many in poverty. Our nation's long-term care system has been built on the backs of home care workers, who are mainly women and disproportionately women of color, but that foundation will soon crumble if we fail to improve job standards and reverse the burnout and high turnover that have plagued the industry. With wages stagnating and even falling in recent years, and demand for in-home supports expected to rise sharply in the next decades, individuals and families will find it increasingly difficult to find experienced home care workers.

"Home care workers have waited long enough for justice. Despite yesterday's decision, most home care workers will finally be protected by our nation's minimum wage and overtime laws come January 1st."

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. For more about NELP, visit www.nelp.org.

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