

Legal Developments Regarding the Department of Labor Home Care Rule

Introduction

In late December 2014 and early January 2015, the U.S. District Court for the District of Columbia issued a pair of rulings that impact the Department of Labor final rule 1235-AA05, “Application of the Fair Labor Standards Act to Domestic Service” (the “Home Care Rule”). This document is meant to serve as a high-level, quick reference summary of the latest developments. **This document should not be construed or relied upon as legal advice on any specific facts or circumstances. Providers should consult an attorney familiar with employment law at the federal, state, and local level to determine their obligations under the law in their jurisdiction.** For a comprehensive summary and analysis of the rulings, see related ANCOR memorandum dated February 5, 2015.

FAQs

Q: Who are the parties to the case?

A: The litigation was filed by three national trade associations that represent service providers: Home Care Association of America, the International Franchise Association, and the National Association for Home Care and Hospice (“Plaintiffs”). The Defendant in the case is the Department of Labor, who is being represented by the Department of Justice (as appropriate for legal processes involving federal agencies).

Q: Which court handed down this ruling, and what is the case titled?

A: The ruling was handed down by District Judge Richard Leon of the United States District Court for the District of Columbia. The case is referred to as *Home Care Association of America v. Weil* (Case No. 14-cv-967).

Q: What is the legal issue in this case?

A: At issue is whether the Department of Labor exceeded the scope of authority delegated to it by Congress to promulgate (set forth) regulations to implement the Fair Labor Standards Act.

Q: What did the court hold?

A: The court ruled that the Department of Labor exceeded the scope of its authority by promulgating regulations that were not consistent with Congressional intent regarding the companionship exemption contained within the Fair Labor Standards Act. Specifically, the court vacated the Home Care Rule’s prohibition against third-party employers availing themselves of the companionship exemption and the revised definition of what constitutes “companionship services” for Fair Labor Standards Act purposes.

Q: Does this ruling have nationwide impact?

A: The scope of the ruling is an open question. Both the Plaintiffs and the Defendants have presented arguments to the court taking the position that the ruling has nationwide impact. The case concerns

national associations and the federal district court order was directed to the Secretary of Labor without restrictions as to geographic location.¹

The legal argument at the heart of this case has not, to date, been presented in other federal district court jurisdictions which would also have authority to hear a case of this nature. For example, a private entity could seek to enforce the rule through private action in a different court, which could come to a differing conclusion about the rule's validity and application.

Until the final disposition of the case, providers, states and stakeholders should be aware that there is uncertainty about potential liability through private enforcement of the home care rule.

Q: What is the next step in the appeals process?

A: On January 22, 2015 the government filed an appeal of the district court's ruling with the Court of Appeals for the Circuit of the District of Columbia. The Defendants requested, and were granted, an expedited process which will have arguments presented to the court in spring 2015.

The appeals court has several options available to it. It could uphold the district court's ruling, or it could overturn the ruling in full or in part. If the appeals court overturns the ruling, it would mean the rule as finalized would remain in effect, and could potentially have applicability back to its effective date of January 1, 2015.

The next level of appeals from the Appeals Court in this case is the U.S. Supreme Court. If one or both of the parties appeals the ruling of the Appeals Court once it is handed down, the Supreme Court could take up the case and would be the final authority in the matter. While a D.C. Court of Appeals decision is influential, a Supreme Court ruling is binding on all jurisdictions, which would settle the question of nationwide applicability.

Q: Assuming the ruling of the district court survives appeals, what parts of the rule remain in effect?

A: The only new provision in the rule that presently remains is the provision changing recordkeeping requirements. The rule discusses several areas of law that it does not change, but does offer clarification for. The Department of Labor has also issued subregulatory guidance on several of these topics. These include sleep time, what constitutes an employment relationship, and shared living. Guidance on these areas is not impacted by the ruling.

Q: How will the Department of Labor respond if the rule ceases to be effective after final disposition of the litigation?

A: The Department of Labor has several potential courses of actions available to it both during and after the final disposition of the case. It could choose not to pursue further revisions to the companionship exemption. However, the current Administration has demonstrated that increasing overtime, minimum wage, and other worker protections are policy priorities. The Department of Labor could enter into the

¹ Unrelated to this litigation, in October 2014, the DOL announced a limited non-enforcement policy for the first 12 months after the rule's effective date of January 1, 2015. That announcement is available at <http://www.dol.gov/whd/homecare/non-enforcement-fr.pdf>.

notice-and-rulemaking process to promulgate a new rule that makes changes to the companionship exemption that would be consistent with the court's ruling.

Q: Do states have contingency plans in place to respond with appropriate budget and other structural changes that may become necessary if the rule is ultimately upheld?

A: States vary widely in the legislative processes used to allocate funding for public programs, including many affected by the rule. Stakeholders should continue to work with appropriate state agencies to ensure that their state is prepared to respond appropriately to future court rulings.

Q: Who can I contact if I have questions about this ruling?

A: ANCOR is committed to providing accurate, timely information to its members. We will continue to push out relevant updates to our members through our electronic newsletters, ANCOR Connected Community, and conference sessions. Members may contact ANCOR staff, including Katherine Berland, kberland@ancor.org, directly with specific questions.