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SUPREME RULES THAT HOME HEALTH WORKERS ARE EXEMPT FROM OVERTIME PAY

On June 11, a unanimous U.S. Supreme Court upheld a Department of Labor (“DOL”) regulation that exempted home health workers employed by third parties (*i.e.*, not by the family for whom they provide services) from the overtime requirements of the Fair Labor Standards Act (“FLSA”).

Section 13 of the FLSA exempts from the statute’s minimum wage and overtime requirements protections:

any employee employed in domestic service employment to provide companionship services for individuals who (because of age or infirmity) are unable to care for themselves (as such terms are defined and delimited by regulations of the Secretary [of Labor]).”
29 U.S.C. § 213(a)(15).

At issue were two seemingly inconsistent DOL regulations. The first defined “domestic service employment” to mean “services of a household nature performed by an employee in or about a private home . . . of the person by whom he or she is employed.” 29 C.F.R. § 522.109(a). The second, in a subsection titled “Interpretations,” exempted companionship employees “who are employed by an employer or agency other than the family or household using their services. 29 C.F.R. § 552.109(a).



The plaintiff argued that the first definition controlled, and that the Department's second regulation was not owed any deference by the court. The Supreme Court disagreed on several grounds. First, the Supreme Court held that the plaintiff's interpretation would be inconsistent with Congressional intent. Second, the Court found that as a matter of statutory construction, "specific" regulations govern "general" ones. Consequently, in this case, the specific definition that excluded home health workers employed by third parties governed the more general, and somewhat contradictory, definition of "domestic service employment." Third, while conceding that the DOL may have interpreted these regulations differently at different times, the Supreme Court held, nonetheless, that such interpretative changes did not create any unfair surprise because of the DOL's reliance on notice-and-comment rulemaking. Fourth, the DOL's most recent interpretation—apparently written in response to plaintiff's lawsuit—was not a post hoc rationalization, but rather a "fair and considered judgment on the matter in question." Fifth, the Supreme Court rejected the plaintiff's argument that the second regulation was "advisory" and, thus, carried no legal weight, or that the rulemaking process was somehow procedurally defective.

Because this ruling maintains the status quo, its impact is somewhat limited. However, it does provide clarity—home health care companies that paid overtime out of an abundance of caution can now rest easy. But that rest may be short lived. Democrats in Congress, most notably Senator Edward Kennedy, are calling for the decision to be legislatively overturned. Of course, a new, Democratic administration could rewrite the regulation. As health care becomes an ever increasing part of the U.S. economy, employers should not expect this decision to be the last word on this controversial issue.

The case is styled *Long Island Care at Home v. Coke*, U.S., No. 06-593, and can be found online at <http://www.supremecourtus.gov/opinions/06pdf/06-593.pdf>.

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