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### *Health Care Alert: Federal Court Strikes Down DOL's New Companionship Services Exemption Regulations*

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New U.S. Department of Labor (DOL) regulations concerning the companionship services exemption to the minimum wage and overtime requirements of the Fair Labor Standards Act (FLSA) were scheduled to take effect on January 1, 2015. There are two primary components to these revised regulations. The first provides that third party employers of direct care workers will no longer be permitted to claim the companionship services exemption. Thus, the exemption would be available only to individuals and families who employ workers directly rather than through companies or agencies. Second, the new regulations include a revised definition of companionship services that is so restrictive that it may effectively extinguish the companionship exemption altogether. For example, under the new definition, if an employee performs any domestic services during a workweek that are primarily for the benefit of other members of the household (e.g., making dinner for the entire family or doing laundry for another member of the household), the exemption is lost for that week. Also excluded from the exemption are employees who perform any medical tasks that typically require training and are performed by medical personnel (e.g., catheter care, turning and repositioning, ostomy care, tube feeding, treating bedsores, and physical therapy). Also, an employee who provides "care" (e.g., dressing, grooming, feeding, bathing, toileting, transferring, meal preparation, driving, light housework, assistance with taking medications) for more than 20% of the workweek loses the exemption for that week.

On December 22, 2014, the U.S. District Court for the District of Columbia struck down the first component of the new regulations. The court ruled that prohibiting third party employers from taking advantage of the companionship exemption was inconsistent with the FLSA. On December 31, 2014, the court issued an order staying enforcement of the second component of the new regulations (the restrictive definition of companionship services) until January 15, 2015. On January 14, 2015, the court struck down the second component of the new regulations. The court ruled that Congress did not delegate to the DOL the authority to redefine the companionship exemption. The Court noted that the DOL's definition of companionship was so

restrictive that, for all practical purposes, it would have written the companionship exemption out of existence.

The court's rulings are good news for third party employers of direct care workers. These rulings mean that these two components of the new DOL regulations never went into effect on January 1, 2015, and that employers may, at least for now, continue to take advantage of the minimum wage and overtime exemptions for companionship services as they have in the past. However, because the DOL has indicated that it plans to appeal the court's rulings, employers should continue to stay closely apprised of developments in this area. For example, it is possible that the DOL could seek an emergency stay of the lower court's rulings. If granted, this could mean that the new regulations would go into and remain in effect until the appellate court ultimately ruled on the DOL's appeal.

Employers can take some comfort in the fact that, in October 2014, the DOL announced that it will not bring enforcement actions under the new regulations until July 1, 2015. However, if there were an appellate court ruling reinstating the new DOL regulations prior to July 1, 2015, the DOL's non-enforcement stance would not prevent individual employees or a group of employees from bypassing the DOL and suing an employer directly in court under the new regulations prior to July 1, 2015.