



Senators Move To Preserve FLSA's "Companionship" Exemption

Insights

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There have been further developments regarding the U.S. Department of Labor's proposed regulation that would drastically limit the Fair Labor Standard Act's Section 13(a)(15) "companionship" exemption. A collection of our posts relating to these matters can be accessed [here](#).

The comment period for the proposed regulation closed on March 21, but the fight over the exemption continues with the Senate's recent entry into the fray. A group of 11 Republican senators has introduced [S. 3280](#) to block the proposed regulation. The "Companionship Exemption Protection Act" would amend the FLSA to preserve the current state of the exemption.

Two of the bill's sponsors, Senators Alexander (R-Tenn.) and Johanns (R-Neb.), argue that the proposed regulation would drive up the cost of in-home care and would force families to institutionalize seniors, thereby straining state Medicaid budgets. Their proposal is a more-elaborate take on the matter than is the identically-named [H.R. 3066](#), introduced in the House of Representatives last September by Nebraska Republican Lee Terry. One feature the bills have in common is that each would remove the Secretary of Labor's authority to "define[] and delimit[]" the exemption.

The companionship exemption provides that the FLSA's minimum-wage and overtime requirements do not apply to employees "employed in domestic service employment to provide companionship services for individuals who (because of age or infirmity) are unable to care for themselves" However, USDOL's proposed regulation would revised the exemption by, among other things, significantly reducing the scope of exempt activities and making the exemption inapplicable to workers employed by third-party staffing agencies. The most significant practical impact of the proposed regulation would be that far fewer individuals would qualify for the exemption.

As we previously [noted](#), proponents of the effort to narrow the exemption initially sought to do so through legislative action. However, those efforts subsequently shifted to the regulatory arena, most likely on the basis of political considerations. Now, the battle appears to have come full circle.

Incidentally, neither of these bills would affect the potential impact of USDOL's proposals upon the FLSA's Section 13(b)(21) overtime exemption applying to "any employee who is employed in domestic service in a household and who resides in such household"

Related People



Ted Boehm
Partner
404.240.4286
Email