CLIENT ALERTS & INSIGHTS

The Companionship Services Exemption: On the Verge of Extinction?

DECEMBER 1, 2011

Recently, the Department of Labor (the "DOL") issued a Notice of Proposed Rulemaking (the "Notice") that would prohibit third party employers from using the "companionship services" exemption to the minimum wage and overtime requirements of the Fair Labor Standards Act (the "FLSA"). Currently, Section 13(a)(15) of the FLSA provides third party employers with both a minimum wage and an overtime exemption for domestic service employees who provide companionship services for individuals who, because of age or infirmity, are unable to care for themselves ("companionship services").

In the Notice, the DOL explains that the health care industry, as a whole, has undergone significant change in the last 35 years. The DOL reasons that it needs to amend its regulations because there has been and will continue to be an increase in the use of home health care workers and the circumstances surrounding the employment of these workers were not envisioned when the regulations were first promulgated. The DOL proposes to narrow the definition of "companionship services," clarify the activities that are considered incidental to "companionship services," and amend the regulation pertaining to third party employment of domestic workers who provide "companionship services."

Significantly, the proposed rule would deny all third party employers the use of the minimum wage and overtime exemptions for workers who provide "companionship services." The proposed rule would, however, continue to permit individuals, families, and households to use the exemption, subject to its revised interpretative guidance.

The DOL created a website specifically for this proposed rule. The website provides the Notice, frequently asked questions, and a fact sheet concerning the changes. Interested parties have until February 27, 2012 to submit written comments.

Benesch has significant experience defending employers' rights under the "companionship services" exemption and regularly assists clients in providing comments to federal agencies.

To discuss the implications of the Notice and how it might affect your business, please contact one of the following Benesch attorneys:

Maynard (Mike) A. Buck at 216.363.4694 or mbuck@beneschlaw.com

Peter N. Kirsanow at 216.363.4481 or pkirsanow@beneschlaw.com

Joseph N. Gross at 216.363.4163 or jgross@beneschlaw.com

Patrick O. Peters at 216.363.4434 or ppeters@beneschlaw.com