

Legal Notes: January 2015

Home care workers of all sorts operate in a legal grey zone (even greyer than most already grey legal zones). According to a recent federal ruling, homecare workers may have even less protection under federal law.

First, a step back to explain two concepts. "Homecare workers" encompasses many people who work regularly or occasionally in someone's home. The workers run the gamut from babysitters for the tots to nurses for the seniors. Much depends on the level of expertise that is required and how regularly the person provides such services. Defining who is or is not a home care worker is also complicated by differing definitions on the state and federal levels.

The other concept is the state and federal wage and hour laws. These are the ones we are familiar with, that provide minimum wages and overtime requirement. What many people are not so familiar with are the many and varied exceptions to the law. These exceptions make no real common sense and more reflect past successes by lobbyists of various industries. For example, there are exceptions for caddies at golf courses and movie theater employees. There has been a long-standing exception for certain home care workers as well.

President Obama, using his rule making powers, has attempted to tighten up and clarify the home care worker exemption. The rule recognized the great expansion of home health care services as opposed to 40 years ago (the last time the rule was revised). The result would be fewer workers falling under the exception. For example, the rule eliminated third party employers, such as temp agencies, from claiming the exemption.

A federal judge in Washington has effectively blocked the implementation of this rule. Such an injunction usually foreshadows a judge's decision to overturn the rule altogether.

Anyone who regularly employs on their own an individual to care for a spouse or parent should check with an attorney as this type of employment can present some legal risks.