



May 12, 2006

FLSA2006-14

Dear **Name\***,

This is in response to your request for an opinion regarding whether your client's employees qualify for the companionship services exemption in Fair Labor Standards Act (FLSA) section 13(a)(15) (copy enclosed). It is our opinion that the employees qualify for the companionship services exemption from the minimum wage and overtime requirements of the FLSA, despite the fact that they are not employed by the individuals with disabilities in whose homes they work but rather are employed by a third party employer.

Your client's employees provide support services for mentally retarded individuals and other individuals who suffer from developmental disabilities. The employer places "support staff" or "direct service employees" in the employer's client's homes to assist the clients with their personal care such as bathing, dressing, and meal preparation. The employees also provide assistance with bill paying, budgeting, and life skills. You state that little to none of the employees' time is spent in general household work. If such work is performed it would constitute less than twenty percent of the total weekly hours worked by each employee. You stated in a telephone conversation with a member of the Wage and Hour Division (WHD) staff that the employees stay overnight in the client's residence but return to the employee's home upon relief by another employee and do not reside permanently in the home of the clients they serve.

Section 13(a)(15) of the FLSA provides that "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" is exempt from the minimum wage and overtime requirements of the Act. The Department's regulations define "domestic service employment" as "services of a household nature performed by an employee in or about a private home (permanent or temporary) of the person by whom he or she is employed." 29 C.F.R. § 552.3 (copy enclosed). Additionally, "companionship services" are defined as:

those services which provide fellowship, care, and protection for a person who, because of advanced age or physical or mental infirmity, cannot care for his or her own needs. Such services may include household work related to the care of the aged or infirm person such as meal preparation, bed making, washing of clothes, and other similar services. They may also include the performance of general household work: *Provided, however*, That such work is incidental, *i.e.*, does not exceed 20 percent of the total weekly hours worked.

29 C.F.R. § 552.6 (copy enclosed).

For the domestic service to qualify for the exemption, the work "must be performed in or about the private home of the employer whether that home is a fixed place of abode or a temporary dwelling as in the case of an individual or family traveling on vacation." 29 C.F.R. § 552.101 (copy enclosed). "Employees who are engaged in providing companionship services, as defined in § 552.6, and who are employed by an employer or agency other than the family or household using their services, are exempt from the Act's minimum wage and overtime pay requirements by virtue of section 13(a)(15)." 29 C.F.R. § 552.109; Wage and Hour Opinion Letter August 16, 2002 (copies enclosed). *See also* Wage and Hour Opinion Letter March 17, 2005 (copy enclosed). It is the WHD's longstanding view that employment by a third party qualifies for exemption under the Act, as explained in Wage and Hour Advisory Memorandum No. 2005-1 (available at [www.dol.gov/esa/whd/foh/advisorymemoranda2005.pdf](http://www.dol.gov/esa/whd/foh/advisorymemoranda2005.pdf)). While the U.S. Court of Appeals for the Second Circuit ruled in *Coke v. Long Island Care at Home*, 376 F.3d 118 (2d Cir. 2004), that section 552.109 was invalid, the U.S. Supreme Court subsequently vacated and remanded the matter for further consideration in light of the above Wage and Hour Advisory Memorandum. *Long Island Care at Home, Ltd. v. Coke*, 126 S. Ct. 1189 (2006).



The “support staff” and “direct service employees” described in your letter<sup>1</sup> qualify for the section 13(a)(15) exemption because they perform companionship services such as assisting their mentally infirm clients with bathing, dressing, and meal preparation in or about the private home of the infirm client being served. *See* Wage and Hour Opinion Letter March 16, 1995 (copy enclosed). Additionally, they meet the qualification that employees not spend more than 20 percent of their time performing nonexempt general household work. *See* 29 C.F.R. § 552.6. The fact that the employees are employed by a third party does not remove them from the companionship exemption.

This opinion is based exclusively on the facts and circumstances described in your request and is given based on your representation, express or implied, that you have provided a full and fair description of all the facts and circumstances that would be pertinent to our consideration of the question presented. Existence of any other factual or historical background not contained in your letter might require a conclusion different from the one expressed herein. You have represented that this opinion is not sought by a party to pending private litigation concerning the issue addressed herein. You have also represented that this opinion is not sought in connection with an investigation or litigation between a client or firm and the Wage and Hour Division or the Department of Labor.

We trust that this letter is responsive to your inquiry.

Sincerely,

Alfred B. Robinson, Jr.  
Acting Administrator

Enclosures:

FLSA § 13(a)(15)

29 C.F.R. §§ 552.3, .6, .101, and .109

Wage and Hour Opinion Letters August 16, 2002, March 17, 2005, and March 16, 1995

**Note: \* The actual name(s) was removed to preserve privacy in accordance with 5 U.S.C. § 552(b)(7)**

---

<sup>1</sup> As a note of caution, the Department approves of the duties described above as companionship duties. The titles used by individual businesses are not relevant to our inquiry. You did not ask about, and we are not addressing, whether the living arrangements qualify as private homes; for purposes of this letter we accept your representation that the employees work in the private homes of the individuals with disabilities.