

Value the Care!

Minimum wage and overtime for home care workers

No. 9

Action Needed Now to Secure Fair Pay for Home Care Workers



Every day across our nation, two million home care workers provide essential services and supports for people in their homes. They bathe our parents and grandparents, and help them take their medications. They help our children with disabilities get dressed. They prepare meals for our elderly neighbors; monitor blood pressure for our aunts and uncles; help our friends with physical therapy exercises. Their work is both demanding and rewarding—importantly, it allows individuals to live with dignity and independence in their homes rather than in institutions.

And yet, currently, in many states, as a result of a decades-old exemption in federal regulations, home care workers can be paid less than the minimum wage and denied overtime compensation for their work.

But that is about to change. The U.S. Department of Labor has issued new regulations that extend federal Fair Labor Standards Act (FLSA) minimum wage and overtime protections to home care workers beginning January 2015. Fair pay for home care workers, however, could be delayed if states do not take action immediately.

States must prepare *now* for the new regulations
to take effect on January 1, 2015.

What States Need To Do for Successful Implementation

In order to implement these long-overdue protections for home care workers on January 1, 2015, states must take immediate action to:

- ✓ Gather reliable data on long-term services and supports and the home care workforce, including workers' total weekly hours per employer;
- ✓ Analyze what impact the regulation may have on long-term services and supports provided through Medicaid and other state funded in-home care programs;
- ✓ Budget funds to pay workers at least the federal minimum wage of \$7.25 an hour (or the state minimum wage if it's higher and covers home care workers) and time and a half for any overtime hours above 40 hours per week worked for one employer; and
- ✓ Budget funds to pay for worker travel time between consumers, if applicable.

The cost of implementing the regulation is expected to be relatively modest in most programs. **California** is likely to spend an additional \$270 annually per Medicaid-funded home care consumer; in New York officials estimate that the initial additional cost will be 18 cents per hour, going down to 15 cents per hour in subsequent years following implementation. More than 20 states have had state-level minimum wage and overtime protections for home care workers in place for decades. States that are newly implementing these protections can learn from them.

Just a few months remain before the new federal regulations are scheduled to take effect. Unless state policymakers take immediate action, the stability of the home care workforce and the consumers who rely on these services could be compromised.

What's At Stake?

Consumer Choice: The right of individuals with disabilities, as affirmed by the U.S. Supreme Court's *Olmstead* decision, to live in the most integrated setting of their choice depends upon the availability of a stable, skilled workforce. Thoughtful implementation of the regulations, including payment for overtime compensation when necessary, is needed to ensure this right is respected.

Failing to pay fair wages threatens the supply of workers at a time when it is vital to grow and strengthen the home care workforce to meet increasing demand. With aging baby boomers driving up the projected demand for in-home services, nationwide we'll need one million more home care workers by 2022. We must improve the quality of home care jobs in order to attract and retain the skilled, compassionate workers we need.

Consistent Care: A minimum wage floor and overtime compensation for home care workers is essential to reducing worker turnover, which averages around 50 percent, compromising both the availability and quality of services. These high rates of turnover are also costly: the industry spends an estimated \$6.4 billion annually to recruit and train new workers, raising the cost for state Medicaid programs.

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Good Jobs: The average wage for home care workers is less than \$10 per hour. Moreover, when these wages are adjusted for inflation, home care workers earn less than they did a decade ago. These desperately low wages for one of our nation's fastest-growing jobs contribute to growing income inequality, undermining economic growth.

It's time to raise the floor for home care workers. Extending federal minimum wage and overtime protections is a critical first step toward better wages and better quality jobs for millions of hardworking Americans.

Better paying jobs benefit us all: home care workers and their families and the millions of Americans who rely on a skilled, stable home care workforce.



The FLSA "companionship exemption" timeline

1938 – The federal Fair Labor Standards Act (FLSA) is enacted to ensure a minimum standard of living for workers through the provision of a minimum wage, overtime pay, and other protections— *but domestic workers are excluded.*

1974 – The FLSA is amended to include domestic employees such as housekeepers, full-time nannies, chauffeurs, and cleaners. However, persons employed as "companions to the elderly or infirm" *remain excluded from the law.*

1975 – The Department of Labor interprets the "companionship exemption" as including all direct-care workers in the home, *even those employed by third parties* such as home care agencies.

2001 – The Clinton DOL finds that "*significant changes in the home care industry*" have occurred and issues a "notice of proposed rulemaking" that would have made important changes to the exemption. The revision process is terminated, however, by the incoming Bush Administration.

2007 – The US Supreme Court, in a case brought by New York home care aide Evelyn Coke, upholds the *DOL's authority to define exceptions* to FLSA.

2011 – President Obama announces a Notice of Proposed Rulemaking (NPRM) that, if enacted, will finally extend minimum wage and overtime protections to the vast majority of home care workers.

2012 – During the three-month public comment period, the US Department of Labor received about 26,000 comments, with more than 75 percent in favor of the rule change.

2013 – After extensive review by the Office of Management and Budget, the U.S. Department of Labor published the revised companionship rule in the Federal Register, with an effective date of January 1, 2015.

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Take Action

- ✓ **Learn more** by reviewing these resources:
 - PHI Campaign for Fair Pay (<http://phinational.org/campaigns/home-care-workers-deserve-minimum-wage-protection>)
 - National Employment Law Project Webpage Resources (http://www.nelp.org/page/content/state_table)
- ✓ **Contact** your governor, your state senator, your state representative, your state's Department of Labor, and the long-term care programs at your state's Department of Health. Urge them to take action immediately to implement the new regulations. Find information about your elected representatives here: <http://openstates.org/>.
- ✓ **Raise your voice.** In addition, if you currently use in-home services through an agency, urge its executives to work with the governor, state legislators, and other state agencies to fund the implementation of this important new regulation.
- ✓ **Ask policymakers** to take a fact-based approach to analyzing the regulation's impact, taking into account existing state coverage if applicable, and the realities of overtime hours, which are typically quite low. Keep in mind that budget projections may be based on faulty assumptions about levels of overtime worked and pay for overnight work and may overlook the **federal portion of the increased costs**, which is at least 50 percent in every state.
- ✓ **Join with other advocates** in your state to insist that home care workers and long-term care consumers deserve this long-overdue change and worthwhile investment.

We Can Help! Contact Gail MacInnes, PHI Government Affairs Manager (gmacinnes@phinational.org) or Sarah Leberstein, NELP Staff Attorney (sleberstein@nelp.org) for ideas, contacts in your state, and other resources.

NELP

**National Employment
Law Project**

The National Employment Law Project (NELP) is a non-partisan, not-for-profit organization that conducts research and advocates on issues affecting low-wage and unemployed workers. For more about NELP, please visit www.nelp.org



PHI (www.PHInational.org) works to improve the lives of people who need home and residential care—and the lives of the workers who provide that care.

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