

OPINION: Home health workers need more pay protections

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By STEVEN DAWSON AND LEONILA VEGA

A year ago this month, an American heroine passed away. Her name was Evelyn Coke. She wasn't well-known, but hopefully someday Coke will be remembered for battling unfair labor practices.



Evelyn Coke was a resident of Queens who worked for an East Meadow-based home-care agency. She was among the 2 million workers — many immigrants like herself — who assist elders and people with disabilities with daily activities such as getting in and out of bed, dressing and undressing, cooking and eating, toileting and bathing. As we age, many of us will need this support to remain independent, living in our homes and communities with our families and friends.

Like many of her co-workers, Coke worked long hours for little pay. Though she sometimes cared for her clients more than 70 hours a week, she claimed to have earned less than minimum wage (which was \$5.15 per hour in 2002). Despite sometimes working three 24-hour shifts in a row, she never received time and a half for overtime.

Forced to retire after an auto accident, Coke believed that she had been treated unfairly, and sued her employer for back wages. Her case went all the way to the Supreme Court. But unfortunately, Coke lost.

In 2007, the U.S. Supreme Court ruled that the U.S. Department of Labor regulations excluding home care workers from the labor protections provided by the Fair Labor Standards Act were valid and binding. That is, the Labor Department could continue to treat home-care workers as informal “companions” — that is to say, baby-sitters.

The U.S. Supreme Court also ruled that the secretary of labor had broad policy-making authority over the scope of “companionship” and could change the current interpretation at any time.

It is past time to make that change.

While New York State just passed a landmark Domestic Workers Bill of Rights, the legislation states that “domestic worker” does not include any individual who is engaged in providing “companionship services” as currently defined by the regulations for the federal Fair Labor Standards Act, or domestic workers who are employed by agencies. So thousands of direct-care workers in New York fall outside of its protections.

Home care is one of America’s fastest-growing occupations. Far from casual companions, these workers play a critical role in our health care system, not only helping their clients live at home, but providing essential supports that keep them out of costly hospitals and nursing facilities. As we move forward with implementing health reform, home care workers can play a crucial role in coordinated care models and in care transitions — important changes that can improve care and save money. We should recognize their contribution by treating them like the professionals they are.

Evelyn Coke had the courage to speak up for herself and her co-workers. She had faith in the American system of justice, believing that even she, an immigrant who never earned more than minimum wage, could ask to be treated fairly. It’s unfortunate that she didn’t live to see justice done.

But there's new hope for her battle for justice now that the Department of Labor has announced it is studying the companionship exemption.

Before the Labor Department's announcement, several members of the U.S. Senate and the House of Representatives had requested that the department fix this injustice. Within the next few weeks, Rep. Linda Sanchez (D-Calif.) is planning to introduce legislation that would put an end to the home care workers exemption.

In honor of Coke and the millions of home care workers nationwide, Secretary of Labor Hilda Solis should immediately provide all home care workers with the minimum wage and overtime protections promised to American workers under the Fair Labor Standards Act.

We cannot tolerate this injustice any longer.

***Steven Dawson** is the president of the national nonprofit PHI (formerly the Paraprofessional Healthcare Institute) which works to improve the quality of long-term care by improving the quality of direct-care worker jobs. **Leonila Vega** is the executive director of the Direct Care Alliance, the national advocacy voice of direct care workers in long-term care*