

15 June 2011

Secretary of Labor Hilda L. Solis
U.S. Department of Labor
200 Constitution Ave., NW
Washington, DC 20210

Dear Secretary Solis:

On the fourth anniversary of the Supreme Court decision in *Long Island Care at Home v. Coke*, we are writing this letter to reiterate our support for the Department of Labor to issue revised regulations limiting the reach of the “companionship exemption,” which currently excludes nearly two million home care workers from federal minimum wage and overtime protections.

We are state and national organizations that represent home care aides or represent the many different constituencies that either depend on or recognize the important role of home care aides in providing daily services and support to millions of individuals and families throughout the United States. We have joined together to support decent labor standards for this crucially important workforce.

As you know, home care is growing faster than almost any other occupation in the U.S. Currently, our nation employs 1.7 million workers in these jobs—and that number is expected to increase by nearly 50 percent over the next decade. Most of these workers assist elders and people with disabilities with personal care needs—dressing, bathing, eating, mobility—and other daily activities essential for maintaining independent, community living. The services they provide for their clients are far more crucial and require more skill than providing simple companionship.

We call on the Department of Labor to revise the companionship regulations by making two significant reforms:

- 1) Workers employed by a home care agency or other intermediary should not be exempt from wage and hour protections under any circumstance; and
- 2) The definition of “companionship” should be narrowed to encompass only fellowship and protection, thereby extending FLSA protections to the vast majority of home care workers who assist their clients with activities of daily living (ADLs) and instrumental activities of daily living (IADLs).

We believe that the cost of this transition is manageable for the industry and for public budgets. Today, [21 states](#) (pdf) provide at least some level of minimum wage and/or overtime protection. In addition, some large multi-state employers, in order to attract a stable workforce, already pay fair wages and use modern scheduling and management tools to ensure both efficient use of their labor force and high standards of consistent caregiving. These examples demonstrate that expansion of federal wage and hour protection is not only the right thing to do—but is a practical response to an outdated policy that has gone on far too long.

Moreover, revising this regulation will have a positive economic impact. Currently, the companionship exemption hurts economic growth in low-income communities where home care is a major occupation, yet pays so little that residents of these communities can only afford basic necessities and must rely on means-tested public assistance programs such as food stamps and Medicaid.

In addition, the exemption hinders the ability of our nation to build the workforce we need to care for an increasingly older population and to support individuals across the country who are burdened with family caregiving responsibilities. Today, these family caregiving responsibilities cost U.S. companies \$34 billion in lost productivity annually.

Finally, the current regulation works at cross purposes to other federal policies that encourage the expansion of home- and community-based services in order to promote community living and limit unnecessary institutional placements. The exemption, which keeps wages extremely low for home care workers, discourages caregivers from seeking employment in the very settings in which the Department of Health and Human Services has sought to build service capacity for over a decade. These are also the settings where consumers typically prefer to receive services. It is time to align federal policies to set a clear and unified direction for our nation's long-term care policy.

It has now been more than a decade since the Clinton administration, in 2001, undertook a similar effort to modernize the exemption. Home and personal care workers, who are increasingly vital to aging, disability, and health care services, should not have to wait any longer to be treated fairly and equally by our nation's labor laws.

We appreciate your efforts to revise the exemption and look forward to working with you to support the proposed changes in the fall.

Alzheimer's Foundation of America
AFSCME
American Geriatrics Society
Community Catalyst
Cooperative Home Care Associates
Direct Care Alliance
Florida Immigrant Advocacy Center
Home Care Associates
Institute for Policy Studies
Interfaith Worker Justice
Labor Justice Committee of El Paso
Legal Aid Society
Make the Road New York
Medicare Rights Center
The National Consumer Voice for Quality Long-Term Care
National Council of La Raza
National Domestic Workers Association
National Employment Law Project
National Immigration Law Center
National Partnership for Women and Families
North Carolina Justice Center
Northwest Workers' Justice Project
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