



July 15, 2011

Dear Secretary Solis,

The Supreme Court decision in *Long Island Care at Home v. Coke* upheld the U.S. Department of Labor's (DOL) authority to interpret the scope of the Fair Labor Standards Act's (FLSA) companionship exemption. The Eldercare Workforce Alliance thanks DOL for undertaking a review the current "companionship exemption." We request that DOL take timely action to issue a revised interpretation of the exemption that will extend greater federal minimum wage and overtime protection under FLSA to the more than 1,500,000 paid home- and community-based care workers who provide essential services to our nation's older adults and people with disabilities.

Over a decade ago, the Clinton Administration offered several ways of modernizing the companionship exemption to FLSA. According to DOL, these updates were required in order to reflect "significant changes in the home care industry over the last 25 years" and because the regulations "exempt types of employees far beyond those whom Congress intended to exempt." Unfortunately, before the revision process could be concluded, it was terminated by the incoming Administration in 2001.

In 2007, the Fair Home Health Care Act (S. 2061/H. R. 3582) was introduced—co-sponsored by then-Senator Barack Obama—which, had it passed, would have extended FLSA protection to a broader definition of home care workers.

We now urge DOL to revise the companionship exemption, and improve quality care by facilitating the recruitment and retention of a quality workforce, in part by expanding federal wage and hour protection. Within 20 years, one in five Americans will be over 65. As our nation ages, direct care workers – who are currently responsible for providing 70 to 80 percent of the paid hands-on long-term care for older adults – will not only be critical to providing quality care; they will also be the largest growing job sector in America. Applying our nation's minimum wage and overtime law to more home and personal care workers can mean quality care for consumers and better support for family caregivers. It will also be important for DOL to have the input of all the various stakeholders affected by this rulemaking process, including users of home care services, their family caregivers, home care workers and employers.

The eldercare industry employs millions of individuals in the United States, and according to DOL, is the fastest-growing employment sector within the health care industry, as more people require this care. The Eldercare Workforce Alliance believes that an important part of improving the quality of care is ensuring the recruitment and retention of a quality workforce, which includes paying adequate wages. Strengthening home care occupations can also drive long-term economic growth, particularly within low-income communities.

Sincerely,



Steven L. Dawson
EWA Co-convener
President
PHI – Quality Care through Quality Jobs



Nancy E. Lundebjerg
EWA Co-convener
Chief Operating Officer
American Geriatrics Society

The positions of the Eldercare Workforce Alliance reflect a consensus of 75 percent or more of its members. These endorsements reflect the consensus of the Alliance and do not necessarily represent the position of individual Alliance member organizations.

The Eldercare Workforce Alliance is a project of The Advocacy Fund.