SUPREME COURT EXEMPTS HOME HEALTH AIDE WORKERS FROM FEDERAL OVERTIME REGULATIONS

On June 11, 2007, in *Long Island Care at Home, Ltd. v. Coke*, No. 06-593, 551 U.S. ___ (2007), the Supreme Court, in a 9-0 decision, rejected the overtime claims of a home health aide worker, Evelyn Coke, against her former employer of 20 years, Long Island Care at Home, for which she provided “companionship services” to infirm men and women.

The decision demonstrates the Supreme Court's deference to the Federal regulations and the importance of taking such regulations into consideration when construing Federal statutes. The decision also clearly blocks potential legal claims by millions of companionship workers for overtime under the FLSA.

Ms. Coke initially brought her claim in April 2002, alleging that her former employer failed to pay her the minimum wages and overtime to which she believed she was entitled under the Fair Labor Standards Act (“FLSA”) and New York wage and hour law.

The high court upheld federal regulations that exempt from the FLSA’s overtime and minimum wage requirements those third-party employees who are providing companionship services in the homes of the aged and infirmed. In doing so, the Court rejected arguments made by unions and other interested groups that the Federal Department of Labor’s (“Labor Department”) regulations should be invalidated because they conflict with Congress’s intent to broaden wage protections.

As the population ages and family members are able to take less of a role in the care for their elderly relatives, the need for domestic workers who can provide companionship services to the senior and ill population continues to increase. As a result of this critical need, many nonprofit and for-profit agencies have developed to provide such services in the home, and to take care of the paperwork involved in paying and providing benefits for these domestic workers. It is estimated there are currently 1.4 million such workers today. By 2014, as the elderly population increases and more individuals stay at home, it is expected that there will be nearly 2 million home health aides.
The Court, in reaching its decision, reversed the decision of the Court of Appeals for the Second Circuit, holding that the exemption applied only to domestic home care aides employed in the home of the person actually employing them. Agencies employing home health aides have relied on 30 years of Labor Department regulations that interpreted the FLSA provision to exempt such workers from the Federal minimum wage and overtime requirements, including the growing number of aides staying around the clock with their charges. The FLSA, 29 U.S.C. §213(a)(15), excludes from minimum wage and overtime requirements “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 (as such terms are defined and delimited by regulations of the Secretary[of Labor]).” Pursuant to a 1974 Labor Department regulation entitled “Interpretation,” the statutory exemption has been construed to cover “companionship workers” “employed by an ... agency other than the family or household using their services” (“Regulation”). 29 C.F.R. §552.109(a).

The chief issue before the Supreme Court was whether the Regulation was binding and should be followed or was merely an “Interpretation” not entitled to the same high degree of deference accorded government agencies’ regulations. Opponents pointed to arguably conflicting Labor Department statements over the past 30 years, and argued that the Labor Department’s regulations were misguided, not proper interpretations and beyond the scope of the Department’s rule-making authority. The Court rejected these arguments and approved the Regulation, applying the exemption to domestic home care aides whether employed by the end-user patient in the home or employed by outside agencies.

In reaching its decision, the Court examined a claimed “conflicting” regulation relating to “domestic service employment.” This defined the term to include “services of a household nature performed by an employee in or about a private home . . . of the person he or she is employed [by] . . . such as cooks, waiters, butlers . . . nurses . . . [and] caretakers.” 29 C.F.R. §552.3 (emphasis added). The Court reasoned that this other regulation was aimed at defining the “kind of work” covered by the exemption, rather than the application of the statutory exemption. In doing so, the Court pointed out that the Labor Department had on three separate occasions considered revising the exemption so that it would not cover companionship workers paid by third-party agencies and entities, yet had consistently adhered to its position.

The Supreme Court emphasized that Congress allows agencies, such as the Labor Department, to use their expertise to fill in the “gaps” of legislation, and that when agencies do so “reasonably, and in accordance with other applicable [] requirements, the courts accept the result as legally binding.” With that in mind, the Court stated that the FLSA clearly has “gaps” that the Labor Department has the authority to fill in through its promulgated rules and regulations. The Court found unconvincing Coke’s argument that an interpretive regulation should only be used to “describe an agency’s view of what a statute means” rather than to fill in a gap. In finding that the Labor Department intended that the “Interpretation” Regulation be a binding application of its rule-making authority, the Court pointed to the fact that the Labor Department used full public notice and comment procedures during the three occasions when it had considered changing its position on the issue.

In deciding Coke, the Supreme Court helped avoid a potential fiscal crisis for third-party providers threatened by the Second Circuit’s decision. Many agencies depend upon Medicare and Medicaid reimbursement, which do not include reimbursement for overtime pay. Domestic home care aides staying around the clock in the homes of their patients would have been dramatically affected. The costs to federal and state governments for Medicaid and Medicare would have escalated. The increased costs threatened to place such domestic home care assistance out of reach for all but the wealthiest individuals, and might have caused a relocation of aged and infirm people from their homes into publicly supported nursing facilities.
While the issue has been laid to rest in the courts, employing agencies must still consider whether their own state law requires minimum wage or overtime pay to home health aides. For example, in New York, such persons, while exempt under the FLSA, must be paid time and one-half the state statutory minimum rate for hours worked in excess of 40 per week. Moreover, whether the exemption will survive is unclear. Senator Edward M. Kennedy of Massachusetts, chairman of the Senate Health, Education, Labor and Pensions Committee, and his counterpart in the House, have stated that they would seek to amend the FLSA to ensure that home care aides are protected.

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If you have any questions regarding the Supreme Court’s decision in *Long Island Care at Home, Ltd. v. Coke.* or about age and hour issues, please contact Peter M. Panken at (212) 351-4840 (ppanken@ebglaw.com), Lauri F. Rasnick at (212) 351-4854 (lrasnick@ebglaw.com) or Evan J. Spelfogel at (212) 351-4539 (espelfogel@ebglaw.com).

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