CLIENT ALERT

June 22, 2007

SUPREME COURT RULES "COMPANIONS" ARE NOT ENTITLED TO OVERTIME AND MINIMUM WAGE IN CONNECTICUT, NEW YORK, AND VERMONT

On June 11, 2007 the U.S. Supreme Court ruled that an exemption from the payment of overtime wages to so-called companionship employees does apply to third party employers, reversing two previous decisions of the Second Circuit Court of Appeals. The Second Circuit, which covers Connecticut, New York, and Vermont, had ruled that employees serving as "companions" to the clients of eldercare and healthcare organizations are entitled to overtime for any hours worked over 40 in a week, and are also entitled to minimum wage. The lower court's decision was a departure from regulations promulgated by the United States Department of Labor and from a specific opinion letter issued by the Department of Labor on this issue.

The decision of the Supreme Court is an affirmation of the Labor Department's regulatory process, and the unanimous Court holds that the exemption to the Fair Labor Standards Act involving in-home health care providers applies to such workers whether they are employed by a family or by third parties (Long Island Care at Home v. Coke, U.S., No. 06-593, 6/11/07). All nine justices side with Long Island Care at Home in finding that the Labor Department's interpretation of the companionship exemption to the FLSA's overtime rules (29 C.F.R. § 522.109(a)) was owed deference by the court; therefore, the Labor Department's interpretation that third-party employers were included in the exemption should have been followed by the Second Circuit, which had sided with worker Evelyn Coke, plaintiff in the case.

BACKGROUND:

In general, employers in Connecticut are subject not only to state wage and hour laws and regulations but also federal wage and hour laws, primarily the federal Fair Labor Standards Act

("FLSA"). These laws basically require that all employees be paid at least minimum wage and overtime wage rates for all hours in excess of 40 hours in a single workweek. An exception exists for companionship services, defined as those services that "provide fellowship, care, and protection for a person who, because of advanced age or physical or mental infirmity, cannot care for his or her own needs." Under this exception, employers who provide a companionship service to clients are not required to pay companions overtime or minimum wage. However, prior to the Supreme Court's new ruling this exception had been invalidated by the Second Circuit in the case of Coke v. Long Island Care at Home, 2006 U.S. App. LEXIS 22438 (August 31, 2006).

The Second Circuit had reviewed the companionship exception and ruled that the exception was contrary to the purpose of federal law, and was therefore invalid. In its 2006 decision the Second Circuit ruled that employees who are employed by an organization to provide companionship services to a third party are entitled to both overtime and minimum wage. Therefore, employers who operated companionship programs in Connecticut, New York, and Vermont were required to pay these employees minimum wage, and overtime for any hours worked over 40 in a week

However, the Supreme Court has now reversed this ruling and restored the exemption for employers in the previously impacted states. Once again, third party employers who place companionship employees in homes to provide services are entitled to the exemption that the DOL regulations provide.

QUESTIONS OR ASSISTANCE?

If you have any questions regarding the impact of this decision on your organization, please contact Joan Feldman at (860) 251-5104 for any health law related issues. If you have any labor or employee relations questions, please contact Gabe Jiran at (860) 251-5520.

Note: In the past we contacted the State of Connecticut DOL, Wage and Hour Division to inquire whether or not they generally apply the same approach as the federal DOL in companionship and other domestic services situations. Connecticut DOL advised that it uses the federal DOL interpretative regulations on these issues. However, Connecticut DOL also stated that "Connecticut minimum wage rates must be paid, even if overtime rates are not required." At that time the federal Second Circuit Court of Appeals decision discussed in this Client Alert had rendered the topic moot by eliminating the federal exemption. Therefore, we did not press the issue of whether Connecticut DOL would require minimum wage payment for companionship services, or only when minimum wage rates are called for in other federal regulations addressing different types of domestic services situations, such as grounds keeping, butler or maid services. Caution is therefore advisable in proceeding under the new federal decision.