

# PUBLICATION

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## Proposed Rule and Enforcement Shift for Home Health Workers and Federal Wage and Hour Law

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The U.S. Department of Labor's Wage and Hour Division has issued a proposed rule on July 2, 2025 that, if approved, will roll back a 2013 rule that limited the scope of the "companionship services" and "live-in domestic service employee" exemptions from the minimum wage and overtime pay requirements of the Fair Labor Standards Act (FLSA). That 2013 rule, among other things, provided that the companionship services exemption and live-in domestic service employee exemption did not apply to home health workers who worked for third-party employers. The proposed rule would eliminate that narrowing of the exemptions as well as return to a broader definition of "companionship services."

In conjunction with issuing the proposed rule, the Department issued Field Assistance Bulletin No. 2025-4, signaling a major shift in enforcement policy for home health workers employed by third-party employers. This change may significantly impact wage and hour compliance obligations for home health providers.

### Key Changes

#### Proposed Rule and Suspension of 2013 Final Rule Enforcement

Consistent with the Department's new proposed rule, effective immediately, the Department will no longer enforce the 2013 rule that extended minimum wage and overtime protections to home health workers employed by third-party agencies (note that the live-in domestic service exemption has provided and continues to provide only an exemption from the overtime pay requirement, not an exemption from the minimum wage requirement). This rollback is in place pending the rulemaking process for the new rule.

#### Impacted Workers

Under the proposed rule, home health workers providing companionship and live-in domestic services through third-party employers would lose federal wage and overtime protections. The rule change and change in enforcement policy, however, would not change the status of registered nurses and licensed practical nurses, who may not be treated as exempt for providing companionship services.

#### Industry Implications

Third-party home health workers providers may now be in a position to reclassify qualifying home health workers as exempt, which would affect such pay issues as compensation for travel time and overtime pay.

### Legal and Strategic Considerations

#### Increased Litigation Risk

Although the U.S. Department of Labor will not be enforcing the 2013 rule while the proposed rule proceeds through the rule-making process, private litigants may still claim that home health workers working for third-party employers are not exempt under the FLSA, particularly until a new final rule comes into effect. Furthermore, state wage and hour laws may still require such workers to be subject to overtime and minimum wage requirements.

### **Compliance Advisory Opportunity**

Providers should seek legal counsel to navigate this evolving landscape and ensure continued compliance with both federal and state regulations.

### **Client Sensitivity**

Home health organizations may need support in revising employment policies, updating contracts, and communicating changes to staff.

## **Next Steps**

We recommend:

- Conducting a compliance audit of current wage and hour practices.
- Monitoring updates from the Department of Labor regarding the proposed rulemaking.
- Preparing internal and external communications to address potential workforce questions and concerns.

For more information on this topic, please contact [Russell W. Gray](#) or any member of Baker Donelson's [Seniors Housing and Long Term Care](#) group.