# PUBLICATION

## Express Delegation Still Means What It Says: Sixth Circuit Upholds DOL Home Care Rule After *Loper Bright*

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**In the wake of *Loper Bright*, many employers have questioned whether long-standing federal regulations remain on solid footing. On April 1, 2026, in *DOL v. Americare Healthcare Services*, the U.S. Court of Appeals for the Sixth Circuit provided a clear answer – yes, where Congress has expressly delegated authority to an agency. In a decision with immediate implications for home care providers, the Sixth Circuit upheld a Department of Labor (DOL) regulation requiring third-party home care agencies to pay overtime, even for live-in caregivers caring for their own family members.**

### The FLSA Baseline – and Its Carveouts

As a general rule, the Fair Labor Standards Act (FLSA) requires employers to pay minimum wage and overtime. See 29 U.S.C. §§ 206, 207. The statute also includes several exemptions, including:

- **The Companionship Services Exemption**, which applies to employees providing companionship services to individuals unable to care for themselves. See 29 U.S.C. § 213(a)(15).
- **The Live-In Domestic Services Exemption**, which applies to employees who reside in the household where they are employed. See 29 U.S.C. § 213(a)(21).

Critically, Congress expressly delegated authority to the DOL to define the scope of these exemptions **–** a point that proved decisive in the Sixth Circuit's analysis.

### The 2013 Rule: Exemptions Narrowed for Third-Party Employers

In 2013, the DOL revised its regulations interpreting the Companionship Services and Live-In exemptions to exclude third-party employers, such as home care agencies (the 2013 Rule). Under this rule, third-party providers must pay overtime – even where the caregiver is a live-in employee or is caring for a family member.

An Ohio-based home care provider challenged the 2013 Rule, arguing that, after *Loper Bright*, the DOL's interpretation could no longer stand.

### *Loper Bright* Does Not Undo Express Delegation

The Sixth Circuit squarely rejected that argument. The court emphasized that *Loper Bright* did not disturb the long-standing principle that Congress may expressly delegate authority to an agency, nor did it call into question regulations issued pursuant to such a delegation.

To the contrary, the court noted that *Loper Bright* itself identified the Companionship Services Exemption as an example of express statutory delegation. Because the FLSA clearly assigns interpretive authority to the DOL,

the 2013 Rule remains valid – regardless of whether reasonable minds might disagree with the agency's policy choice.

## A Strange Backdrop: DOL Seeks to Roll Back the Rule It Defended

The decision comes against an unusual regulatory backdrop. In July 2025, the DOL issued a proposed rule that would rescind the 2013 Rule. At oral argument, the Sixth Circuit questioned why the agency continued to prosecute the case while proposing to make the employer's conduct lawful going forward.

The DOL responded that any rollback would not apply retroactively and that the employer's conduct was unlawful during the relevant period. The agency did not explain its change in position, though its proposed rule states that "the Department is concerned that the 2013 regulations do not reflect the best interpretation of the FLSA and discourage essential companionship services by making these services more expensive."

Notably, on July 25, 2025, the DOL also announced that it was suspending enforcement of the 2013 Rule. Whether the Sixth Circuit's decision will affect the final fate of the rule remains unclear.

## What This Means for Employers in the Sixth Circuit

For third-party home care providers operating in Tennessee, Kentucky, Ohio, and Michigan, the message is straightforward:

- Express delegation survives *Loper Bright*.
- Courts will continue to uphold DOL regulations issued pursuant to clear statutory authority – even where the agency later changes its interpretation.
- Employers should not assume that *Loper Bright* undermines existing DOL rules grounded in express delegation under the FLSA.

Other courts have reached the same conclusion. Earlier this year, the Third Circuit likewise upheld the 2013 Rule on express-delegation grounds, and additional circuits may follow.

Until the regulatory landscape definitively changes, any modification to wage-and-hour practices should be made cautiously and in consultation with HR and legal counsel.

For additional information or questions regarding compliance with the FLSA, please contact Zachary B. Busey, Dean J. Shauger, Kayla M. Wunderlich, or any member of Baker Donelson's Labor & Employment Group.