

DOL says home care workers will get minimum wage, OT

Decades-old exclusion ends for nearly 2 million workers

Starting Jan. 1, 2015, nearly two million home care workers will be entitled to the federal minimum wage and overtime pay. Under a new rule announced by the U.S. Department of Labor, they'll be covered for the first time under the Fair Labor Standards Act — the 1938 law that created the federal minimum wage and the requirement to pay time-and-a-half for hours over 40 in a week.

When the Fair Labor Standards Act passed in 1938, "domestics" like housekeepers, cooks, and gardeners were excluded from its protections. Congress ended the exclusion in 1974, but exempted domestic service workers who provide "companionship services." It was left up to the Department of Labor to define the term "companionship services."

Since then, a lot has changed. An entire home care industry has developed as an alternative to nursing homes or other institutions. Today an estimated 1.9 million people are employed caring for elderly, sick, injured and disabled people who need help caring for themselves in their own homes. Nearly all these "home care workers" are employed by or paid by home care agencies. Approximately 90 percent of the workers are women, and nearly 50 percent are minorities. And increasingly, they are professional caregivers, with titles like certified nursing assistants, home health aides, personal care aides, and caregivers — not the "elder sitters" Congress envisioned when it enacted the companionship services exemption in 1974.

State-paid home care workers in many states are represented by AF-SCME and Service Employees International Union (SEIU). For years, those two unions and the AFL-CIO have pushed the Department of Labor to update the definition. An update was proposed during the Clinton years, then withdrawn, then resubmitted in the final days of Clinton's presidency, and withdrawn again when George W. Bush took office. When Barack Obama was elected president, organized labor pushed again for the rule change. And at a White House press conference Dec. 15, 2011, Obama announced the rule would change.

"In-home care workers across the country should not have to wait a moment longer for a fair wage," Obama declared at the press conference.

But wait they did. It was initially expected the new rule would take effect in

early 2012, after a 60-day comment period. Instead, as with other labor-related regulatory changes, the administration delayed action, for years.

Since Thomas Perez was confirmed as Labor Secretary in July 2013, Labor Department rule changes like this one have been coming out of limbo.

Twenty-one states plus the District of Columbia already require home care workers to receive the state minimum wage, and 15 states also require overtime pay. But the federal rule change will mean improved conditions for home care workers in those other states.

Under the new rule, announced Sept. 17, live-in domestic service employees will still be exempt from the overtime requirement. And workers who are employed only by the person receiving services — and whose work is primarily fellowship and protection (providing company, visiting or engaging in hobbies) — may still be exempt from minimum wage and overtime, depending on duties. But those who are employed by a home care agency or other employer besides the person or family being helped will be covered. They'll get \$7.25 an hour, and \$10.88 an hour overtime. Estimates are that could add up to \$215 million a year extra in the pockets of some of America's poorest workers.

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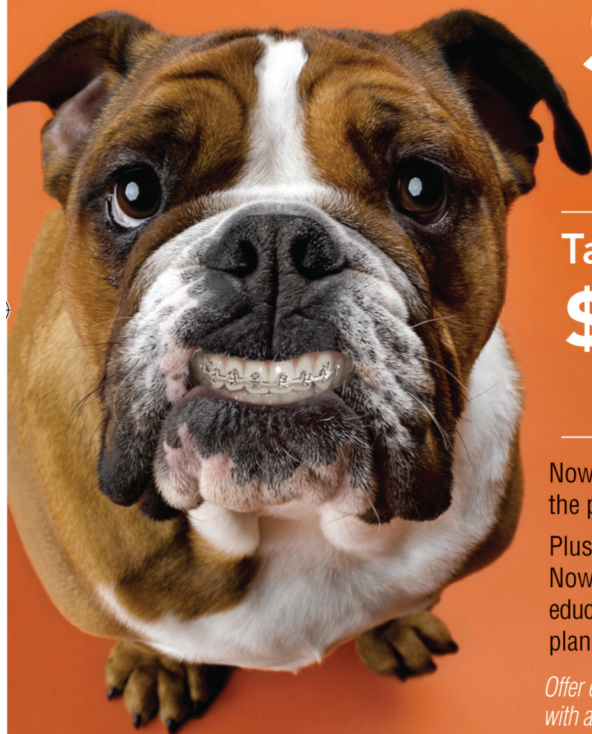
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