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ARE HOME HEALTH WORKERS ENTITLED TO OVERTIME?

By Victor Sy, CPA, MBA

No. The U.S. Supreme Court has ruled that a home health care worker employed by a third-party employer was **not entitled to overtime** under the Fair Labor Standards Act (FLSA). The Supreme Court went on further to rule that such home health workers are **not entitled to minimum wage protection**.

Case: The case of *Long Island Care at Home v. Coke*, involved Evelyn Coke, the plaintiff, who was employed as a "home health care attendant" by Long Island at Home, Ltd. Long Island did not pay her minimum wage or overtime.

Background: 29 USCS 213(a)(15) of the FLSA **exempts** individuals from minimum wage and overtime coverage if they are employed to provide companionship services to others who, because of age or infirmity, cannot care for themselves (the companionship services exemption). The Department of Labor took the exemption one step further when it issued a regulation, 29 CFR 552.109(a), that extended the exemption to individuals employed by a third party. However, this regulation somewhat **conflicted** with another DOL regulation (29 CFR 552.3) that defines the term "domestic service employment."

Coke believed that 29 CFR 552.109(a) was **unenforceable** because it conflicted with 29 CFR 552.3 and the federal statute [i.e., 29 USCS 213(a)(15)]. In 2006, the U.S. Court of Appeals for the Second Circuit ruled that Coke was entitled to minimum wages and overtime (see RIA Payroll Guide Newsletter 09/15/2006). The Second Circuit believed that the DOL was exceeding its authority by extending the exemption to individuals employed by a third party. The ruling was **appealed** to the Supreme Court.

Supreme Court Ruling: The highest court overturned the Second Circuit's decision and ruled that home health care workers are **not entitled to overtime or minimum wage protection** because:

1. 29 CFR 552.109(a) does not exceed the DOL's delegated rulemaking authority. The FLSA empowers the DOL to address this issue.
2. For the past 30 years, the DOL has treated 29 CFR 552.109(a) as a legally binding exercise of its rulemaking authority.
3. The regulation seems to fill a statutory gap by covering whether workers paid by third parties are included in the companionship services exemption.
4. The sole purpose of 29 CFR 552.109(a) is to explain how the companionship services exemption applies to persons employed by third-party entities, whereas the primary purpose of 29 CFR 552.3 is to describe the kind of work that must be performed to qualify someone as a "domestic service" employee. 29 CFR 552.109(a) governs because it is more specific with respect to the question at issue.

Impact of Decision: The Supreme Court ruling is a **victory for the home health care industry**.