

# *Sy Accountancy Corporation*

Member, American Institute of CPAs

704 Mira Monte Place, Pasadena, California 91101

Tel (626) 744-0200 • Fax (626) 744-0300 • vsy@victorsycpa.com • www.victorsycpa.com

## Are Caregivers in an Adult Family Home Entitled to Overtime?

By Victor Sy, CPA, MBA

In June of 2007, the U.S. Supreme Court 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 also ruled that such workers were **not entitled to minimum wage protection** (*Long Island Care at Home v. Coke*).

In September of 2007, The U.S. District Court for the Western District of Washington ruled that a couple who worked as **caregivers in an adult family home were not entitled to overtime**, even though they lived in the home and were expected to be available to the residents 24 hours a day (*Park v. Choe, DC Wash, Dkt. No. C06-5456RJB, 9/10/07*).

**Facts of Case:** Ji Young Park and Joung Sook Park, husband and wife, worked as **caregivers** at the Garden Court Adult Family Home in the State of Washington. Mr. Park **washed, bathed, and fed** the residents of Garden Court. He also **took them to their doctors and gave them their medications**. Mrs. Park **cooked for the residents, did the laundry, and provided them with recreation activities**. Mr. and Mrs. Park were **required to sleep** at Garden Court. Both were expected to be **available to the residents 24 hours a day**. They were **not compensated for overtime**. The Parks **sued for overtime pay**.

**Court Findings:** The U.S. District Court looked at the live-in domestic service employee exemption and the companionship exemption to determine if Mr. and Mrs. Park were entitled to overtime.

**Live in domestic service employee exemption.** The Fair Labor Standards Act (FLSA) provides an exemption from overtime coverage for "any employee who is employed in domestic service in a **household** and who resides in such household." Statutes and regulations do not define the term "household." At issue was whether the Parks resided in a household. The court looked at the evidence and held that Garden Court **was a "household"** for purposes of the live in domestic service employee exemption. In issuing its ruling, the court also cited Washington law which defines an adult family home as a "residential home in which a person or persons provide personal care, special care, room, and board to more than one but not more than six adults who are not related by blood or marriage to the person or persons providing the services."

**Companionship exemption.** The court next looked at whether Mr. and Mrs. Park were entitled to minimum wages for all hours worked under the FLSA. FLSA minimum wage and overtime provisions do not apply to "any employee in domestic service employment to provide companionship services for individuals who are unable to care for themselves." The term "domestic service employment" refers to services of a household nature performed by an employee in or about a private home, permanent or temporary, of the person by whom he or she is employed. Mr. and Mrs. Park argued that the home in question was not the "private home" of the residents and so the companionship exemption did not apply. The court did not agree with Mr. and Mrs. Park. It held that the companionship exemption applied to the Parks because the home in question was a "private home." The court noted that even if the property was owned by a third party and leased to the defendants, the residents of Garden Court lived there on a permanent basis. There was no evidence in the records that the home was open to the public.

**Court Decision:** The U.S. District Court ruled that both the live-in domestic service employee exemption and the companionship exemption applied to Mr. and Mrs. Park; therefore, plaintiffs were not entitled to overtime pay for federal purposes. The court also ruled that Mr. and Mrs. Park were not entitled to state overtime under the Washington Minimum Wage Act which specifically exempts from overtime "any individual whose duties require that he or she reside or sleep at the place of his or her employment."