



March 21, 2012

Mary Ziegler, Director  
Division of Regulations, Legislation, and Interpretation  
Wage and Hour Division  
U.S. Department of Labor, Room S-3502  
200 Constitution Avenue, NW  
Washington, DC 20210  
WHDPRAComments@dol.gov

Re: Proposed Rule on Application of the Fair Labor Standards Act to Domestic Service  
RIN 1235-AA05

Dear Ms. Ziegler:

On behalf of the National Partnership for Women & Families and the undersigned organizations, we thank you for the opportunity to respond to the Department of Labor's request for comments on the proposed rule that would extend the critical wage and hour protections of the Fair Labor Standards Act (FLSA) to millions of home care workers. This rule will significantly enhance the economic security and job quality of these workers who have been, up until now, excluded from these most basic labor standards.

We applaud the Department of Labor for promoting fair treatment for the men and women who care for our loved ones by extending minimum wage and overtime benefits to a broader population of domestic service workers, specifically those who spend more than twenty percent of their time providing personal care to clients, who spend time conducting general household tasks, or who work for third party employers such as staffing agencies. This rule will ensure that millions of women and men who provide essential care to children, parents, grandparents and others in need will be more fairly compensated for their critical work. It will improve working conditions in a growing industry and help to attract well-qualified workers to a profession of great importance to our nation's families.

Home care workers provide critical services to their clients. They help clients bathe, dress, eat, and play a fundamental role in keeping clients healthy. They provide medications, take blood pressure readings and help clients perform physical activities that promote health, well-being and quality of life. Their role is increasingly important as the country's population ages rapidly. Some estimates suggest that the demand for home care workers will increase by nearly 50% between 2008 and 2018.<sup>1</sup>

The proposed rule closes a loophole that enables employers to pay sub-minimum wages to home care aides -- an occupation dominated by female workers. It will ensure that the congressional intent behind the law is fully realized. In 1974, Congress amended the FLSA to include domestic service workers,

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<sup>1</sup> See Paraprofessional Healthcare Institute (PHI), *Occupational Projections for Direct-Care Workers 2008-2018* (Feb. 2010), available at [http://www.directcareclearinghouse.org/download/PHI%20FactSheet1Update\\_singles%20%282%29.pdf](http://www.directcareclearinghouse.org/download/PHI%20FactSheet1Update_singles%20%282%29.pdf).

reasoning that doing so would help raise wages and “the status and dignity of [domestic] work.”<sup>2</sup> Congress included in its amendment an exemption for casual babysitters and those providing companionship to the elderly or infirm. The Department of Labor subsequently issued regulations interpreting the meaning of the companionship exemption so that those who provided “fellowship and protection for a person who, because of advanced age or physical or mental infirmity, is unable to care for themselves” would not be covered by the FLSA.<sup>3</sup>

In the years since, however, the regulations have become outdated. Home care has become a major industry, generating billions of dollars in profits<sup>4</sup> for third party agencies who now employ approximately 70 percent of home care aides.<sup>5</sup> The proposed rule would bring regulations back in line with Congress’ goal of protecting domestic service workers by ensuring that non-casual employees who provide critical health and personal care services are properly paid and treated fairly. The rule would clarify the meaning of the companionship exemption; it would better define the meaning of “fellowship” and “protection,”<sup>6</sup> and consequently ensure that FLSA wage and overtime protections are available to those whose vocation it is to care for the elderly or infirm. In doing so, the rule will put an end to compensation practices that fail home care workers and their families and leave millions of professional caregivers to live in poverty.

The work that home care workers perform has been grossly undervalued. Home care aides earn so little that nearly half must rely on public benefits to adequately support their families.<sup>7</sup> Low salaries, grueling hours, and substandard working conditions create serious problems with regard to employee recruitment and retention.<sup>8</sup> The industry currently has high annual turnover rates of nearly 50-60%.<sup>9</sup> Not only is this turnover rate harmful to those receiving care, but it also costs employers approximately up to \$2 billion a year.<sup>10</sup> The proposed rule will positively impact the industry by making home health care jobs more attractive.

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<sup>2</sup> House Report No. 93-913, 93rd Cong., 2d Sess., pp. 33-34 (1974).

<sup>3</sup> 76 Fed. Reg. 81190, 81193 (Dec. 27, 2011).

<sup>4</sup> See Paraprofessional Healthcare Institute (PHI), *Value the Care! Min. Wage & Overtime for Home Care Aides*, No. 4, Fixing the “Companionship Exemption”: Myths & Facts (2012), <http://phinational.org/policy/wp-content/uploads/phi-value-the-care-04.pdf>.

<sup>5</sup> 76 Fed. Reg. 81190, 81196 (Dec. 27, 2011) (citing University of California San Francisco, Center for California Health Workforce Studies, *An Aging U.S. Population and the Healthcare Workforce: Factors Affecting the Need for Geriatric Care Workers* 30 (Feb. 2006)).

<sup>6</sup> 76 Fed. Reg. 81190, 81193 (Dec. 27, 2011).

<sup>7</sup> See Paraprofessional Healthcare Institute (PHI), *PHI analysis of U.S. Census Bureau, Current Population Survey, 2010 Annual Social & Economic (ASEC) Supplement* (Dec. 2010), available at <http://phinational.org/policy/about-the-workforce/at-a-glance/>.

<sup>8</sup> See Paul K. Sonn, Catherine K. Ruckelhaus & Sarah Leberstein, National Employment Law Project, *Fair Pay for Home Care Workers: Reforming the U.S. Department of Labor’s Companionship Regulations Under the Fair Labor Standards Act*, 17 (2011), available at [http://nelp.3cdn.net/ba11b257b1bb32f70e\\_4rm62qgkj.pdf](http://nelp.3cdn.net/ba11b257b1bb32f70e_4rm62qgkj.pdf).

<sup>9</sup> See Dorie Seavey & Abby Marquand, *Caring in America: A Comprehensive Analysis of the Nation’s Fastest-Growing Jobs: Home Health and Personal Care Aides*, 70 (Dec. 2011), available at <http://www.directcareclearinghouse.org/download/caringinamerica-20111212.pdf>.

<sup>10</sup> See Paraprofessional Healthcare Institute (PHI), *Value the Care! Min. Wage & Overtime for Home Care Aides*, No. 4, Fixing the “Companionship Exemption”: Myths & Facts (2012), <http://phinational.org/policy/wp-content/uploads/phi-value-the-care-04.pdf> (“The endless cycle of recruitment, training, and associated administrative tasks cost employers on average at least \$2500 per worker – that’s an annual industry cost of somewhere between 1.3 and \$2 billion”).

This rule will have a profound impact on the millions of women working in the home care industry. Women make up 90% of the nation's 2.5 million home care workers,<sup>11</sup> and their earnings are critical to the well-being of their families. Women are primary or co-breadwinners in nearly two-thirds of families, and an increasing number of those women head single-parent families.<sup>12</sup> Given the sheer number of women working in the home care industry, the companionship exemption has had a significant and negative impact on untold numbers of women and families. The extension of FLSA protections to these women will greatly improve their economic security and could help them raise their families out of poverty.

We appreciate this opportunity to submit comments about this proposed rule. If you have any questions, please contact Sarah Crawford or Vicki Shabo of the National Partnership for Women & Families at 202-986-2600.

Sincerely,

National Partnership for Women & Families  
 9to5, National Association of Working Women  
 American Association of University Women (AAUW)  
 American Civil Liberties Union (ACLU)  
 Catalyst  
 Coalition on Human Needs  
 Disciples Justice Action Network  
 Disciples Women of the Christian Church in the United States and Canada  
 Family Caregiver Alliance, National Center on Caregiving  
 Family Values @ Work Consortium  
 Feminist Majority  
 Greater New York Labor-Religion Coalition  
 Labor Project for Working Families  
 National Association of Mothers' Centers  
 National Council of Jewish Women  
 National Council of Negro Women  
 National Council of Women's Organizations (NCWO)  
 National Employment Lawyers Association (NELA)  
 National Organization for Women (NOW)  
 National Women's Health Network  
 Partnership for Working Families  
 Raising Women's Voices for the Health Care We Need  
 RESULTS  
 U.S. Women's Chamber of Commerce  
 Voices for America's Children  
 Wider Opportunities for Women (WOW)  
 Women of Reform Judaism  
 Women's Law Project

<sup>11</sup> See Dorie Seavey & Abby Marquand, *Caring in America: A Comprehensive Analysis of the Nation's Fastest-Growing Jobs: Home Health and Personal Care Aides*, 70 (Dec. 2011), available at <http://www.directcareclearinghouse.org/download/caringinamerica-20111212.pdf>.

<sup>12</sup> Boushey, H., & O'Leary, A., Executive Summary. In H. Boushey and A. O'Leary (Eds.), *The Shriver Report: A Woman's Nation Changes Everything* (2009), [http://www.americanprogress.org/issues/2009/10/pdf/awn/a\\_womans\\_nation.pdf](http://www.americanprogress.org/issues/2009/10/pdf/awn/a_womans_nation.pdf).