# *Supreme Court Upholds FLSA Exemption for Certain Home Health Care Employees*

***by Neal F. Weinrich***

Home health care agencies take note -- The Supreme Court recently addressed an important wage and hour question facing the home health care industry in Long Island Care at Home, Ltd. v. Coke, 127 S.Ct. 2339 (U.S. 2007).

The Fair Labor Standards Act (the "FLSA") imposes requirements for payment of minimum wage and overtime compensation for certain employees. The question before the Supreme Court in Long Island Care at Home, Ltd. v. Coke was whether home health care workers employed by third-party agencies who provide companionship services to those unable to care for themselves are exempt from the requirements of the FLSA.

The 1974 amendments to the FLSA expanded its coverage to include certain "domestic service" workers. These same amendments exempted certain employees who provided "companionship services for individuals who (because of age or infirmity) are unable to care for themselves."

The question of whether employees who worked for third-party agencies, rather than directly for the family or household to whom care was provided, were also exempt was reserved for regulation by the Department of Labor ("DOL"). Long Island Care at Home, Ltd. v. Coke was a challenge to the DOL regulation saying such employees were exempt.

Evelyn Coke was a domestic worker who provided companion services to elderly and infirm men and women. She brought a lawsuit against her former employer and its owner seeking unpaid minimum wages and overtime wages, under both the FLSA and a New York statute. The district court dismissed Ms. Coke's lawsuit, based on the DOL regulation. The United States Court of Appeals for the Second Circuit reversed the district court, holding that the regulation was inconsistent with the FLSA statutory scheme and was therefore unenforceable. However, on review, the Supreme Court reversed the Second Circuit, holding that the DOL regulation was properly promulgated and entitled to deference.

This decision has important consequences for home health care agencies and their employees. The decision makes it clear that employees of such agencies who provide "companionship services for individuals who (because of age or infirmity) are unable to care for themselves" are exempt from the requirements of the FLSA.

Employers must be cautioned that this decision does not mean that all their employees are exempt from FLSA requirements. Only those providing "companion services" are exempt. Indeed, the DOL has issued certain regulations to guide employers as to when an employee is providing such services and thus is exempt.

Furthermore, state wage and hour laws may impose minimum wage and overtime requirements. The same employees who are exempt under the federal law may not be exempt under state law. Where state law provides for minimum wage or overtime requirements that the FLSA does not, the employee gets the benefit of the more stringent state law.

Federal and state wage and hour laws can be convoluted and confusing. However, failure to comply with these laws can expose an employer to serious liability. If you are a home health care agency or employer, it is highly recommended that you consult with counsel to ensure that your employment practices and policies comport with both federal and state wage and hour laws.