Clock Now Ticking On "Companionship", Live-In Domestic Restrictions

December 31, 2011 by John E. Thompson

The U.S. Labor Department has officially published the proposed provisions that would drastically limit the federal Fair Labor Standards Act's exemptions for "companionship" workers and live-in domestic employees. As we have reported, adopting these proposals in their current form will mean that the proportion of such companions and domestic-service workers who are exempt from that law's minimum-wage and/or overtime requirements will be far smaller than it is today.

The deadline for submitting objections or other comments is ***February 27, 2012***.

The Labor Department has been essentially unresponsive to employers' questions about its intentions as it developed these proposals. However, it is now clear that, all along, officials have been working closely with proponents and other employee-advocacy groups. A December 20 telephone conference hosted by the Paraprofessional Healthcare Institute revealed that communications with the Secretary of Labor and others at the Labor Department by those who favor the practical elimination of the exemptions have been "intensive." This extended to an earlier submission of "thousands" of comments urging the kinds of changes that have now been proposed.

PHI favors restricting the exemptions despite the organization's acknowledgement that these revisions could well be "painful"; that they "may force some consumers to pay more, or receive fewer hours of service"; that "some profit margins may indeed become narrower for a while"; and that "some workers will have fewer hours".

The coalition of proponents will be coordinating another round of numerous statements favoring the changes. Moreover, one teleconference presenter disclosed that the Labor Department will be keeping tabs on how many incoming comments there are, which is likely a hint that officials are inviting reason to characterize support as having been overwhelming.

Indications are that the result might be preordained. But even if this is so, employers who are against the proposals have all the more reason to submit their objections and recommendations. Failing to do so could provide fuel for a later argument (such as in any future litigation questioning the authority for and/or attacking the contents of the revisions) that the "regulated community" expressed little disagreement.