

FLSA-77

January 17, 1975

This is in reply to your letter of September 6, 1974, with which you seek further information concerning the application of the Fair Labor Standards Act to a proprietorship you represent.

You indicate that your client provides persons who perform companion and babysitting type services for children, and for aged and sick individuals in private homes, hospitals, and residential care establishments. The services performed are of a nonprofessional nature and consist in supervision, light housekeeping, incidental preparation of food, and companionship. Based on the information submitted, we would characterize your client's establishment as a temporary help agency.

Employees of a temporary help service working on assignments in various establishments are joint employees of both the temporary agency and the establishment in which they are employed. Although the temporary help agency does not meet the dollar volume test (\$250,000 or more annually) for enterprise coverage under the Act, its employees would be covered by the Act in any workweek in which they work for an establishment or a private household which is otherwise covered by the Act. In such cases, the employees must be paid the applicable minimum wage that applies to the establishment where they work.

You will note in the enclosed pamphlet that the Act provides different minimum wage and overtime standards for employment subject to the law prior to February 1, 1967, and employment brought under the law after that date. By virtue of the 1966 and 1974 amendments to the Act, employment in hospitals, residential care establishments, and private homes was brought under the law and there is no annual dollar volume enterprises test involved.

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You will further note in section 552.109 of the enclosed proposed regulations that the exclusion provided for casual babysitting and companionship services does not apply to third party employment. Therefore, an agency furnishing employees to such covered establishments must pay its employees at least \$2.00 an hour as of January 1, 1975, and overtime compensation for hours worked over 40 in a workweek, unless a specific exemption applies.

Sincerely,

William Hoffman, Director
Division of Minimum Wage
and Hour Standards
Wage and Hour Division

Enclosures

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- Annual Dollar Volume threshold has been changed by later amendments to the Act.
 - Minimum wage has been increased by later amendments to the Act.