

## FLSA-191

July 9, 1975

This is in further reply to your letter of May 8, 1975, addressed to Mr.\*\*\* our Associate Regional Director is \*\*\*. You request a determination as to whether or not an employment relationship exists under the Fair Labor Standards Act between your client,\*\*\* Inc., and the individuals it refers for employment as sitters for the sick and handicapped.

You state that \*\*\* takes assignments from clients, and refers the assignments to individuals classified as sitters who are registered with the company. The sitter contacts the client, sets the rate to be paid, and is free to accept or reject the referral. The sitter is responsible for collecting the fee from the client, and for the payment of the company's referral fee. The sitter's duties when he or she works in a private home are outlined by the family and/or patient's physician. When a sitter works in a hospital or nursing home, the sitter is expected to obey the rules and regulations of the hospital or nursing home, and to follow the directions of the doctors, nurses, and patients or patient's family.

Based on the information you provide, clarifying information previously received from your client, it is our position that \*\*\*, is an employment agency whose primary function is the referral of individuals for employment. The activities of such an agency would preclude an employment relationship between the agency and the sitters it refers for employment. However, an employment relationship would exist between the sitter and the hospital or nursing home where employed, and between the sitter and householder when employed in a private home. In such situations the hospital or nursing home is responsible for seeing that the proper minimum wage and overtime requirements of the Act are met. As previously noted in correspondence with your client, section 13(a)(15) of the Act provides a complete minimum wage and overtime pay exemption for domestic service workers employed in private households to provide companionship services for individuals who (because of age or infirmity) are unable to care for themselves.

We hope this satisfactorily responds to your inquiry. However, if you have any further questions please do not hesitate to let us know.

Sincerely,

Warren D. Landis  
Acting Administrator  
Wage and Hour Division