

## FLSA-98

August 29, 1975

This is in reply to your letter of August 14, 1975, addressed to the Secretary of Labor, concerning the application of the Fair Labor Standards Act to your agency,\*\*\*. You state you operate a small, private home care and paramedical agency and employ nursing aides, home health aides and homeworkers who work in private homes. You were advised by the State of \*\*\* Department of Labor that such workers are domestics and are not entitled to overtime compensation if they work over 40 hours in a workweek under the State law.

Effective May 1, 1974, the Fair Labor Standards Act (also known as the Federal Minimum Wage Law) was amended to extend its coverage to domestic service employees. Therefore, such employees, with certain exceptions, must be paid at least the statutory minimum wage of \$2.00 an hour (\$2.20 beginning January 1, 1976 and \$2.30 beginning January 1, 1977) and overtime compensation for all hours worked over 40 in a workweek, at not less than one and one-half times their regular rates of pay.

Section 13(a)(15) of the Act, however, provides both a minimum wage and an overtime pay exemption for domestic service workers who are employed "to provide companionship services for individuals who (because of age or infirmity) are unable to care for themselves." This is explained in the enclosed copy of Regulations Part 552 which provides the necessary rules for the application of the Act to domestic service workers; sections 552.2, 552.6, 552.106 and 552.109 are pertinent to your operations. Thus, if your employees are employed as "companions" and do not exceed the 20% tolerance test set for the performance of household work, they would be exempt from both the minimum wage and overtime pay provisions of the law (see 552.6). Trained personnel such as registered and practical nurses do not come within this exemption.

With regard to your question relative to employees who work for two or three different people during the same week, you are advised that if they do "companionship" work exclusively in all of the homes, the exemption would apply. However, if, for example, they do companionship in one household and babysitting or domestic-type work in another in the same workweek, the exemption would not apply (see 552.109(a)).

If you have any further questions with regard to this matter, you may wish to get in touch with the Area Office of the Wage and Hour Division at \*\*\* . Officials there are in a better position to ascertain the necessary facts in a given situation and they will be pleased to be of all possible assistance to you. There is also a Field Station in the \*\*\* . That office is staffed by investigative personnel whose duties require them to be away from the office and it would be advisable to make arrangements by telephone before visiting the office.

Sincerely,

Herbert J. Cohen  
Assistant Administrator

Enclosure