

FLSA-595

November 25, 1975

This is in reply to your letter of September 24, 1975, in which you request an opinion on whether the exemption provided by section 13(a)(15) of the Fair Labor Standards Act, as amended in 1974, would apply to "houseparents" employed by *** County to oversee and reside with 6 or more mentally retarded persons in residential County homes.

Section 13(a)(15) of the amended Act provides a minimum wage and overtime pay exemption for "any employee employed on a casual basis in domestic service employment to provide babysitting services or any employee employed in domestic service employment to provide companionship services for individuals who (because of age or infirmity) are unable to care for themselves (as such terms are defined and delimited by regulations of the Secretary)." A person employed in a private household to care for someone who cannot take care of himself or herself because of age or infirmity comes within the meaning of this exemption. This is true whether such a person is employed by the household or a public or private agency.

In amending the Act so that its benefits as to minimum wage and overtime would be extended to domestic servants, the Congress was mindful of the special problems of working fathers and mothers who need an occasional babysitter, or who need a person to care for an elderly invalid in their home. Thus they provided an exception for such employment in section 13(a)(15). With regard to its legislative history, the Congress intended that domestic service be considered as relating to services of a household nature performed by an employee in or about the private home of the person by whom he or she is employed. Services performed outside of a private home would not be within the term "domestic service." Accordingly, the exemption would not apply to employees providing care to institutionalized persons, such as in your case, even though they are in a residential home setting.

Sincerely,

Warren D. Landis
Acting Administrator

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