

## FLSA-344

September 19, 1980

This is in reply to your letter of August 19, 1980, concerning our letter of August 14, 1980, requesting additional information on the nature of your clients' businesses in order that we may make a more definite determination with regard to the application of the Fair Labor Standards Act.

You state that your clients are involved in administering to the needs of the elderly and the handicapped who, generally, are homebound, or in need of assistance in getting out from the home. Services include purchasing household goods and food, helping to care for these individuals, cleaning the homes of these individuals, and being a companion. These services are performed, depending on the needs of those aided, either on a live-in basis or on a day-to-day non-live-in basis. We assume that the homes in question are private households where the elderly and the handicapped reside.

The Act provides that an employee in domestic service in a household is covered under the law if the employee receives from his employer cash wages of not less than \$50 in a calendar quarter or if the employee works for more than eight hours in the aggregated in any workweek for one or more households. Such employees must be paid a minimum wage of at least \$3.10 an hour and overtime premium pay for all hours worked in excess of 40 in a workweek, unless specifically exempt. Enclosed for your information is a copy of 29 CFR Part 552 concerning the application of the Act to domestic service workers.

Section 13(a)(15) of the Act provides a complete minimum wage and overtime pay exemption for 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. This exemption would apply to employees providing such services even though they are employed by an employer or agency other than the family or household using the services (see section 552.109 of the regulations).

In this regard, employees of third parties (such as your clients) will be considered to be engaged in providing "companionship services" if they do not spend over 20% of their total weekly hours worked in the performance of general housekeeping duties. Stated conversely, the employee must devote 80% or more of his or her work time in tending to the personal needs of the aged or infirm person being cared for such as meal preparation, bed making, room cleaning, washing clothing, and other similar services in order for the exemption to apply (see section 552.6 of the regulations).

You indicate that the employees provide a wide variety of services including general household management and maintenance, transportation of clients, and companionship services. Thus, the section 13(a)(15) exemption would apply only to those employees whose duties come within the definition of companionship services under the regulations.

For example, this exemption would not apply to employees providing household management and maintenance for a family. This would be true even though an aged or infirm person is in the family.

If after reading the enclosed material you have any further questions concerning the application of the Fair Labor Standards Act to your clients' employees, you may find it more convenient to get in touch with our Area Office at 970 Broad Street, Newark, New Jersey 07102 (Telephone 201-645-2279). That office is responsible for the administration of the Act in your area, and will be pleased to offer every possible assistance.

Sincerely,

Henry T. White, Jr.  
Deputy Administrator

Enclosure