

FLSA-805

September 24, 1984

This is in further response to your July 16 request for an opinion concerning the application of section 13(a)(15) of the Fair Labor Standards Act (FLSA) and sections 552.6 and 552.109 of 29 CFR to employees of an agency which employs housemaker aides.

You indicate that the agency provides assignments for aides who work in the homes of aged and infirm persons. Although some of the aides possess California licenses as certified health aides, such licenses are not a requirement for the type of work they do. The aides' duties consist of light housework, bathing, and otherwise caring for the physical needs of the aged or infirm persons. Some of the aides, who are employed on a 24-hour basis, spend 6 hours per day performing the above-mentioned duties, 12 hours sleeping, and the remaining time engaging in purely personal pursuits on the premises. The aides work on a continuous schedule of 4 days on duty, followed by 3 days off duty.

You inquire about the agency's obligations with respect to the payment of minimum wage and overtime compensation to these employees.

We have considered your inquiry under the provisions of section 13(a)(15) of FLSA. This section provides a minimum wage and overtime pay exemption for employees 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 applies to employees providing services even though they are employed by an employer or agency other than the family or household using the services. (See section 552.109(a) of the enclosed copy of 29CFR Part 552.)

In this regard, employees of third parties (such as an agency) will be considered to be engaged in providing "companionship services" if they do not spend over 20 percent of their total weekly hours worked in the performance of general housekeeping duties. In other words, the employees must spend 80 percent or more of their 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 also inquire about the agency's obligation with respect to the payment of minimum wage and overtime compensation to aides who spend 10-12 hours in the home of the aged or infirm persons. You indicate that the aides will perform little or no care for the person and will do no housework at all. However they must stay awake for at least 8 hours but normally spend the remaining 2-4 hours sleeping.

The minimum wage and overtime pay exemption contained in section 552.109 of the regulations is also applicable to the above employees who will be performing "companionship services" for aged and infirm persons.

We wish to point out that the section 13(a)(15) exemption is not applicable to "companionship services" relating to the care and protection of the aged and infirm which are performed by trained personnel, such as a registered or practical nurse.

We hope this is responsive to your inquiry. If we can be of further assistance, please let us know.

Sincerely,

Nancy M. Flynn

Deputy Assistant Administrator\OPO

William M. Otter
Administrator

Enclosure