

Employers must pay overtime to home health service employees who work for clients not living in private homes

According to the Fair Labor Standards Act (FLSA), an employer is not required to pay overtime to an employee who provides companionship services to an aged or infirm individual in a private home. The exemption was created by Congress to enable guardians of the elderly and disabled to financially afford to have their wards cared for in their own private homes instead of institutionalizing them.

In January, the 10th Circuit Court of Appeals reversed a district court's decision requiring an employer to pay overtime to its home health service employees because the clients' residences were not private homes. The appeals court said the lower court had erred because they had not evaluated the clients' residences individually to determine if they were private homes.

The Case

Bios Corporation provides home health services to developmentally disabled individuals in Oklahoma. A group of Bios employees sued the company claiming that they were entitled to overtime pay for any hours they worked over forty in a week. Bios requested that the case be dismissed, arguing that they were not required to pay overtime wages because of the FLSA's exemption for companionship services. The district court said that the employees were eligible for overtime wages because they did not work in private homes. Bios appealed.

The 10th Circuit Court of Appeals reversed the lower court's decision, indicating that the lower court had erred when it said that none of the client residences were private homes. Because the exemption only applies when the client is living in a private home, each client's living arrangement must be evaluated to determine if he or she lives in private home. The appeals court sent the case

back to the district court to evaluate each client's living situation and to determine which, if any, employees were entitled to overtime pay. The court spelled out six factors which the lower court should consider when determining if a client lives in a private home:

- Was the client living in the living unit as his or her private home before beginning to receive the services? If so, then the unit is probably a private home.
- Who owns the unit? If the unit is owned by the client or his family, then it is probably a private home.
- Who maintains the residence? If the client maintains the residence, then it may be a private home.
- Would the client be allowed to live in the unit if the client were not contracting services from the provider? If not, then the unit is probably not a private home.
- What is the relative difference in the cost of the services to the total cost of maintaining the residence. If the cost of services is high, the unit may not be a private home.
- Does the service provider use any part of the residence for its own business? If so, then the residence may not be a private home.

How this Ruling Affects Counties

This ruling is important for all employers that provide home health services to elderly or infirm clients. For each client, an employer must determine if the client resides in a private home. If so, then the employee who provides health services to that client may be exempt from overtime pay.

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