

***Advocacy Recommends that the Labor Department Review Small Business Impact of Minimum Wage and Overtime Requirements for Companion Care Workers***

On March 12, 2012 the Office of Advocacy (Advocacy) filed a comment letter with the Department of Labor (DOL) regarding its proposed rule entitled, *Application of the Fair Labor Standards Act to Domestic Service*. A complete copy of Advocacy's letter to DOL may be accessed at: <http://www.sba.gov/advocacy/816>.

- Companion care workers are non-medical aides that provide the elderly and infirm with in-home assistance with basic daily living activities and fellowship.
- Under the Fair Labor Standards Act, companion care services are exempt from minimum wage and overtime requirements; live-in companion care services are exempt from overtime requirements. The proposed rule would limit the companion care exemption to those employed by the family or household using those services. Third party employers, such as staffing agencies, could no longer claim the exemption. The proposal also requires employers to track the hours worked by a live-in domestic employee.
- Small business representatives have recommended that DOL reevaluate the private-pay sector of the companion care industry in the agency's IRFA. Roundtable participants believe that DOL's economic analysis should include data from funding sources other than Medicare and Medicaid. New industry surveys and data on the companion care industry, provided by small businesses, show that there are a large number of small companion care businesses in the private-pay sector. The data also shows that a substantial portion of companion care services are provided by the private-pay sector.
- Small business representatives at an Advocacy-hosted roundtable also discussed alternatives to this rulemaking that may minimize costs, including provisions from state laws that would allow third party employers to utilize the exemption for live-in workers, calculate nighttime hours differently, or calculate overtime hours at a reduced rate. In addition, small businesses have recommended that DOL clarify that registries are not third party employers, and that DOL delay the compliance the time and/or effective date to allow small businesses to change their business practices.

For more information, visit Advocacy's Web page at <http://www.sba.gov/advo>, or contact Assistant Chief Counsel Janis Reyes by email at [Janis.Reyes@sba.gov](mailto:Janis.Reyes@sba.gov) or by phone at 202-205-6533.