

LATSHA DAVIS & MCKENNA



ATTORNEYS AT LAW

PLEASE REPLY TO: Mechanicsburg
WRITER'S E-MAIL: gdavis@ldylaw.com
athomas@ldylaw.com
djameson@ldylaw.com

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CLIENT ALERT – PROPOSED CHANGES IN REGULATIONS

Dear Client:

For healthcare employers, December has seen many changes that will impact their workplace. In Pennsylvania, the Department of Health (DOH) issued interim regulations on photo identification badges and the United States Department of Labor (DOL) has proposed changes with regard to regulations applying to domestic workers. Both are highlighted below.

Photo Identification Badges

On December 10, 2011, DOH issued proposed regulations to implement section 809.2 of the Health Care Facilities Act. The regulations' requirements only apply to employees that deliver direct care to a consumer outside of a health care facility or employment agency and to employees of the private practice of physicians. There will be other regulations forthcoming that apply to employees that deliver direct care at a health care facility; the statutory changes do not apply to the latter group until June 1, 2015.

Although the regulations are interim and DOH will receive comments, DOH will enforce based on the interim regulations. The proposed regulations require that employee identification badges contain the following:

- (1) a recent photograph of the employee, updated every four years (except if having a photograph taken would violate the tenets of the employee's religion or religious beliefs);
- (2) the employee's full name to include, at a minimum, the full first and last name;
- (3) the employee's title; and
- (4) the name of the employee's health care facility or employment agency.

Changes to Wage and Hour Regulations for Companionship and Live-in Workers

DOL has published a Notice of Proposed Rulemaking (NPRM) to revise the companionship and live-in worker regulations. Under the NPRM, DOL has proposed two major changes. First, DOL seeks to more clearly define the tasks that may be performed by an exempt companion. Second, DOL seeks to limit the companionship exemption to companions employed only by the family or household using the services. Third party employers, such as health care staffing agencies, could not claim the exemption, even if the employee is jointly employed by the third party and the family or household. Among other things, the

1700 Bent Creek Boulevard, Suite 140 ● Mechanicsburg, PA 17050 ● (717) 620-2424 ● FAX (717) 620-2444

350 Eagleview Boulevard, Suite 100 ● Exton, PA 19341 ● (610) 524-8454 ● FAX (610) 524-9383

3000 Atrium Way, Suite 251 ● Mt. Laurel, NJ 08054 ● (856) 231-5351 ● FAX (856) 231-5341

Maryland Telephone: (410) 727-2810

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proposed regulations would revise the recordkeeping requirements for live-in domestic workers. Under the proposal, employers would be required to maintain an accurate record of hours worked by such workers, just as other covered employees must keep such records.

According to DOL:

Although the regulations governing exemptions have been substantially unchanged since they were promulgated in 1975, the in-home care industry has undergone a dramatic transformation. There has been a growing demand for long-term in-home care, and as a result the in-home care services industry has grown substantially. However, the earnings of in-home care employees remain among the lowest in the service industry, impeding efforts to improve both jobs and care. Moreover, the workers that are employed by in-home care staffing agencies are not the workers that Congress envisioned when it enacted the companionship exemption (i.e., neighbors performing elder sitting), but instead are professional caregivers entitled to [Fair Labor Standards Act] protections. In view of these changes, [DOL] believes it is appropriate to reconsider whether the scope of the regulations are now too broad and not in harmony with Congressional intent.

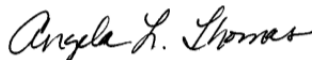
For Pennsylvania employers, these rules may not really have much impact; the Pennsylvania Department of Labor and Industry has held that the exemption for domestic services applies only to employees of the household and does not apply to employees of third parties.

If you have any questions or concerns about these proposed rules or any other employment/labor law issue, please contact Angela Thomas or Glenn Davis at 620-2424.

Sincerely,



Glenn R. Davis



Angela L. Thomas



Daniel R. Jameson

The information herein reflects the views of the author. The information should be construed as general guidelines and not interpreted as legal advice.