

Direct Care Alliance Policy Brief No. 2

Protecting Home Care Workers under the Fair Labor Standards Act

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Increasing numbers of households are turning to home care workers to help provide critical care for aging and disabled family members. However, a 2007 Supreme Court decision, *Long Island Care at Home, Ltd., et al. v. Coke*,¹ holds troubling implications for the provision of quality home care at a time when the demand for such care is at an all-time high.

The Coke decision addressed the rights of home care workers under the Fair Labor Standards Act (FLSA), which guarantees most employees a basic right to a federal minimum wage and overtime compensation.² The case was filed

by Evelyn Coke, a former employee of Long Island Care at Home, a home care agency in New York. Ms. Coke worked for the agency for more than 20 years, often sleeping in her clients' homes and working 24-hour shifts.³ She alleged that Long Island Care at Home violated the FLSA by failing to pay her minimum wages and overtime wages to which she was entitled.⁴ In a unanimous decision, the Supreme Court ruled that hundreds of thousands of home care workers, like Ms. Coke, are not entitled to the most basic of federal labor protections.⁵

As this policy brief discusses, the Coke decision threatens to destabilize the home care industry, erode the precarious economic status of home care workers, and undermine the quality of care that they provide to home care clients. Proposed federal initiatives could help reverse this trend.

The FLSA's Companionship Exemption and the Coke Case

Enacted in 1938, the FLSA establishes minimum employment standards, including a minimum wage and overtime

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The Direct Care Alliance

The Direct Care Alliance is the national advocacy voice of direct care workers. We empower workers to speak out for better wages, benefits, respect, and working conditions, so more people can commit to direct care as a career. We also convene powerful allies nationwide to build consensus for change.

Snapshot

The Home Care Industry: Increased Demand and Poor Compensation

Home care workers provide critical services to elderly and disabled individuals that enable them to function as independently as possible for as long as possible. Workers assist clients with personal and household duties including bathing, dressing, shopping, cleaning, and meal preparation. They also help clients with medical tasks such as administering medications and checking temperatures.⁶

According to official statistics, the combined number of workers in home care, including personal and home care aides plus home health aides, totaled roughly 1.5 million in 2006.⁷ Over the coming years, employment in home care jobs is projected to grow considerably. Projections indicate that employment of personal and home care aides will grow by 49 percent

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compensation for hours worked in excess of forty hours a week. As originally adopted, the FLSA did not reach individuals who worked inside private homes performing domestic service work because of doubt about whether they were engaged in interstate commerce. Congress specifically extended coverage to these workers in 1974, when it amended the FLSA to apply to employees “employed in domestic service in a household.”²⁰

In passing the 1974 domestic service amendments, Congress simultaneously limited their reach by crafting exemptions from the FLSA’s minimum wage and overtime provisions for casual babysitters and for people who “provide companionship services for individuals who (because of age or infirmity) are unable to care for themselves”²¹ The legislative history of the 1974 amendments indicates that Congress, in exempting companions, intended to exclude those individuals who, like occasional babysitters, worked in a casual, non-professional capacity for a

private household.²² The prevailing image of a companion was a neighbor or a friend who spent time with an elderly person and who, because she was not a regular breadwinner, did not require the protection of the FLSA. Thus, as explained by Senator Harrison Williams, the primary sponsor of the amendments, the companionship exemption was intended for “‘elder sitters’ whose main purpose of employment is to watch over an elderly or infirm person in the same manner that a babysitter watches over children.”²³ A companion was also understood as someone who worked directly for the individual household.²⁴

This image of a companion stands in stark contrast to most of today’s home care workers. Contrary to the one-on-one employment relationship between an employing household and a companion, the majority of home health care aides are employed by agencies.²⁵ And unlike companions who work on an itinerant basis, home care workers commonly work on a full-time, regular basis.²⁶ In short, there is little similarity between the casual labor pattern of a neighbor who intermittently works as a companion and the regular, dedicated service performed by home care workers who shoulder significant responsibility for the economic wellbeing of their families.

In 2001, the Department of Labor (DOL) acknowledged that the conception of a companion that prevailed in 1974 sharply contrasted with the many home care workers who were being denied FLSA protection:

Due to significant changes in the home care industry over the last 25 years, workers who today provide in-home care to individuals needing assistance with activities of daily living are performing types of duties and working in situations that were not envisioned when the companionship services regulations were promulgated. The number of workers providing these services has also greatly increased, and most of these workers are being excluded from the FLSA under the companionship services exemption.²⁷

The DOL observed that the companionship exemption had serious economic consequences for home care workers, given that their earnings “remain[ed] among the lowest in the service industry.”²⁸

However, the DOL has been inconsistent in its statements and policies regarding the exemption. After the enactment of the 1974 amendments, the DOL adopted regu-

Snapshot *(cont’d from page 1)*

from 2006 to 2016⁸ and the employment of home health aides will grow by 51 percent during the same time period.⁹ Indeed, the demand for home care is so strong that these jobs are expected to be among the top three fastest-growing occupations during that decade.¹⁰

This growing demand may be hard to meet without improvements to the job, as home care occupations lag near the bottom of the economic ladder. In 2003, wages were so low both for home health aides and for personal and home care aides that their annual earnings would have averaged less than \$17,000 if they were employed full-time.¹¹ As home care provides only part-time employment for many workers,¹² however, the situation was even bleaker. Assuming an average of about 30 hours a week, home care workers earned less than \$13,000 a year¹³—and less per hour than workers employed as gaming-booth cashiers, utility meter readers, or bicycle repairers.¹⁴

A lack of work-related benefits compounds the problem of low wages. Home care workers often are not offered or cannot afford employer-sponsored health insurance, and few get other benefits such as pension plans.¹⁵ In addition, because they are usually paid only for the time they work in a client’s home, they must use their meager earnings to pay for time spent travelling between clients’ homes.¹⁶ These working conditions offer little hope for a workforce dominated by low-income women¹⁷ who are disproportionately African American or Hispanic.¹⁸

lations interpreting the exemption that significantly increased its scope. First, the DOL defined companionship services in broad, sweeping terms to include the performance of a range of household and personal tasks that greatly exceeded the provision of companionship.²⁹ Second, the DOL provided that the exemption covers not only workers employed by private households but also workers employed by third-party employers such as home care agencies.³⁰

At issue in *Long Island Care at Home, Ltd., et al. v. Coke* was the validity of the DOL regulation that interpreted the “companionship exemption” to exclude both home care workers employed by an individual homeowner employer and workers employed by a third-party employer, as was the case with Evelyn Coke. The Supreme Court ruled against Ms. Coke and held that, because Congress did not clearly express its intentions in 1974 regarding the scope of the exemption, the DOL’s interpretation of the exemption was reasonable and entitled to judicial deference.³¹

Concerns about Home Care’s Costs

A frequent objection raised in opposition to extending FLSA protection to home care workers is based on cost concerns. The argument is advanced that the cost of home care will increase if third-party employers must pay minimum wages and overtime to home care workers who provide companionship services. However, as Counsel for Ms. Coke has observed:

[A cost increase] cannot be considered a valid objection or providers of all essential services would be exempt from the FLSA’s protections. Yet police and fire personnel are covered, hospital employees are covered, nursing home employees are covered, and other providers of essential services are covered. Why should homecare workers uniquely carry the burden of society’s need for their services[?]³²

Moreover, because Medicare and Medicaid fund much of the services provided by home care workers, claims that extending FLSA protection to home care workers will result in clients being unable to afford home care are greatly exaggerated. To be sure, granting home care workers FLSA protection may require state and federal governments to shoulder greater responsibility for the cost of publicly funded home care. However, a caring society should take collective responsibility for long-term care rather than placing responsibility on the weary shoulders

of poor and low-income home care workers, excluding them from minimum labor protections extended to the majority of employees in the United States.

It also seems likely that fears about skyrocketing costs are exaggerated when one considers that several states already include home care workers within the ambit of their own state wage and hour laws.³³ There is no evidence that the decision of these states to provide home care workers minimum labor protections has adversely affected the provision of long-term care.³⁴

In addition, cost-based concerns fail to consider the costs that will be saved by reducing job turnover among home care workers. Estimates indicate that the average costs to replace a direct care worker range from \$4,200 to \$5,200.³⁵

Cost-based objections to covering home care workers under the FLSA also fail to account for the costs borne by both the workers and the taxpayers as a result of substandard wages. Because the average home care worker is a forty-six year old³⁶ single mother of children under the age of eighteen,³⁷ the job’s poor compensation is especially troublesome. Compared with other workers, home care workers are twice as likely to rely on public assistance programs to sustain themselves and their families.³⁸ A 2004 report by the Department of Health and Human Services indicates that between thirty and thirty-five percent of single-parent home health aides receive food stamps.³⁹

A related objection is that an increase in the cost of home care services will reduce the availability of care, which will in turn compromise the quality of care. Ironically, the current reality suggests that the exact opposite is true. Home care workers are exiting the job—and, as a result, the quality of care is suffering—because of the job’s poor working conditions, including low compensation levels. As the AARP argued in its brief to the Supreme Court on behalf of Ms. Coke, the exemption of home care workers employed by third-party employers from the FLSA operates not to protect but to compromise the interests of clients.⁴⁰

The Harmful Consequences of Exclusion

Clients are disadvantaged by the severe labor imbalance that characterizes the home care industry. The substantial growth of America’s elderly population is the most significant factor driving the exploding demand for home care.⁴¹ Between 2003 and 2030, the percentage of people in the United States aged 65 and older is expected to increase

from 12 percent of the total population to 20 percent.⁴² For many elderly individuals with disabilities, aging has generated a demand for long-term care to help with activities such as bathing, meal preparation, toileting, shopping, and managing medications.⁴³

Elderly individuals who need assistance most commonly rely on family and friends to provide informal, unpaid care, but the demand for formal care has risen as the supply of informal caregivers has dwindled.⁴⁴ The National Family Caregivers Association predicts that the number of potential informal family caregivers for each person who requires care will decrease from 11 in 1990 to 4 in 2050.⁴⁵

Despite the increased demand for workers, a labor shortage exists in the home care industry. Organizations that provide long-term care invoke the term “crisis” to describe the problems they face in attracting and retaining home care workers.⁴⁶ Significantly, turnover rates among workers are extremely high. Estimates indicate that as many as fifty percent of all workers quit their jobs every year.⁴⁷ Faced with low-wage and low-status work, it is no surprise that many workers leave the job in search of more sustainable employment opportunities.⁴⁸

Poor compensation not only contributes to a shortage of workers but also endangers the quality of care provided to elderly and disabled persons. A worker’s departure can have devastating consequences for a client who must adjust to a new worker and who may experience service disruptions that can lead to hospitalization.⁴⁹ For other clients, turnover may culminate in their relocation to a nursing home or other institutional setting.⁵⁰

Far from undermining access to quality services, extending FLSA protection to home care workers will, in the words of AARP, “strengthen the home care workforce and result in higher quality of care and continuity of care for America’s older and disabled persons.”⁵¹

It is imperative that steps are taken to protect the rights of home care workers to fair compensation, beginning with insuring that they—like most other American workers—are covered under the FLSA. Providing this protection is essential in order to gain home care work the respect and compensation it deserves, and to attract and retain the qualified workers we will need as demand grows.

The Need for Federal Reform

Federal action is required to address the harmful consequences of the Coke decision and improve the rights of home

care workers. Two approaches that can achieve this end are outlined below. One would amend the FLSA to explicitly include home care workers within its coverage. The other would revise Department of Labor regulations to significantly limit the reach of the companionship exemption.

THE FAIR HOME HEALTH CARE ACT

Senator Tom Harkin (D-IA) introduced the Fair Home Health Care Act of 2007 in the Senate to amend the FLSA.⁵² The bill proposes two changes to existing law that would provide greater protection for home care workers. First, it would limit the FLSA’s companionship exemption to apply only to those home care workers who are employed on a casual basis,⁵³ so as to mirror the FLSA’s treatment of domestic service employees who are babysitters.⁵⁴ Second, it would add the following definition to the law:

“Casual basis” means employment which is irregular or intermittent, and which is not performed by an individual whose vocation is the provision of babysitting or companionship services or an individual employed by an employer or agency other than the family or household using their services. Employment is not on a casual basis, whether performed for one or more family or household employers, if such employment for all such employers exceeds 20 hours per week in the aggregate.⁵⁵

The definition also excludes from the exemption workers employed by third-party employers such as home care agencies. In addition, it eliminates the unjustifiable distinction that presently exists between home care workers and domestic service employees such as maids, gardeners and handymen. Under current law, the latter are entitled to FLSA protection even if they work on a casual basis, while the companionship exemption denies protection to many home care workers even if they work on a full-time basis. The bill would eliminate this disparate treatment by limiting the companionship exemption to only casual companions.

Under existing law, domestic service employees who live in the home where they work are exempt from the FLSA’s overtime provision.⁵⁶ This provision applies to all live-in domestics, including home care workers. The bill would leave this exemption unchanged.

In addition, under current DOL regulations, employees who are required to be on duty for 24 hours or more,⁵⁷ or who reside on the employer’s premises may not be entitled

to compensation for time spent sleeping.⁵⁸ The proposed bill would not change these regulations, which would apply to home care workers providing companionship services.

REVISING THE DOL'S COMPANIONSHIP REGULATIONS

In 2001 the DOL, under the administration of former President Clinton, proposed several revisions in the companionship regulations to significantly limit application of the companionship exemption. The proposals were withdrawn by the Bush administration before they became final,⁵⁹ but they offer a useful blueprint for protecting home care workers under the FLSA through regulatory channels.

In its proposal, the DOL recommended amending the definition of “companionship services” to more closely align it with Congressional intent. A current DOL regulation defines companionship services as services for the “fellowship, care, and protection” of persons who cannot care for themselves.⁶⁰ The regulation includes services that greatly exceed the essential understanding of a companion that prevailed in 1974. Thus, the regulation provides that companionship services can include “meal preparation, bed making, washing of clothes, and other similar services.”⁶¹ It also allows the exemption to apply when a companion performs general household work unrelated to the care of the client, as long as such general work does not exceed 20 percent of the total weekly hours worked. This type of general housework includes household tasks such as vacuuming and dusting.⁶²

The DOL explored three alternatives to revise the “companionship services” regulation. All three proposals aim to narrow the exemption by redefining companionship. The DOL observed that fellowship may involve reading to or chatting with the person as well as playing cards, watching television, or going for a walk with the person. “Whatever the specific activity, it must involve personal interaction between the in-home care provider and the care recipient in order for the proposed companionship services exemption to apply.”⁶³

All three proposed alternatives eliminate the current provision that allows the exemption to apply if the worker spends up to 20 percent of her time performing general household work unrelated to the care of the person. The DOL observed that general household work should be protected because it falls within the ambit of the type of work that Congress sought to protect when it amended the FLSA in 1974 to reach domestic service workers.⁶⁴

Under the first proposal, the companionship exemption applies if fellowship is a “significant part” of the worker’s duties.⁶⁵ However, this option does not define what percentage of a worker’s time spent on fellowship qualifies as “significant.”

Under the second proposal, the companionship exemption applies if fellowship is the “primary” duty of the worker, in that a worker must spend more than 50 percent of her time engaged in fellowship in order to be exempt as a companion.⁶⁶

Under the third proposal, the exemption applies only if fellowship is the “sole” core duty of the worker, in that a worker spends at least 80 percent of her time engaged in fellowship activities.⁶⁷

All three proposals allow for the performance of other non-fellowship tasks that are directly related to the client’s care, such as preparing meals or washing dishes, as long as such work does not exceed 20 percent of the hours worked per week. This tolerance for other work differs from the existing regulation in that, under the proposed revision, the performance of other work must be directly related to the client’s personal care. By contrast, the present regulation allows the exemption to apply in situations where a worker performs additional household work that is unrelated to the client’s care.⁶⁸

Of the three proposals, the third offers the most protection to home care workers, exempting them only if at least 80 percent of their work time is spent on fellowship activities. The third proposal also places a stronger emphasis than the others on pure fellowship duties. Under the first and the second proposals, if fellowship occurs in conjunction with the performance of intimate caregiving tasks, those tasks would qualify as exempt duties. Thus, for example, the time a worker spends assisting a client with bathing and grooming qualifies as fellowship. By contrast, under the third proposal, the 80-percent fellowship requirement cannot include the performance of any intimate tasks. Fellowship must be the sole core duty.

As a result of this distinction, the third proposal most closely aligns companionship with fellowship—and with Congressional intent.

The 2001 proposed revisions also stipulate that the companionship exemption should apply only to home care workers employed by individual households or families. In recommending this revision, the DOL acknowledged that the current exemption of workers employed by agencies

does not reflect Congressional intent in adopting the 1974 domestic service amendments.⁷⁰

The legislative history of the amendments clearly indicates that Congress intended to limit the companionship exemption to domestic service workers directly employed by the people they assist and/or their family members. For example, various legislative reports on the amendments describe domestic service by observing that “the generally accepted meaning of domestic service relates to services of a household nature performed by an employee in or about a private home *of the person by whom he or she is employed.*”⁷¹ Revising the regulation would ensure that home care workers who provide companionship services would be protected under the FLSA if they are employed by a third-party employer.

Moving Forward

Because the Fair Home Health Care Act offers the advantage

of explicitly covering home care workers under the FLSA, Congress should be encouraged to reverse the impact of the Coke decision by passing the bill. However, translating the bill into law may prove difficult, given the many economic issues presently looming before Congress, so the DOL should take immediate action to revise its companionship regulations as well.

Doing nothing is clearly not an option. Home care is vital to America’s elderly and disabled population, and demand will only swell as the baby boomers age. As long as home care remains a low-wage job that offers workers few benefits and little respect, turnover will continue to escalate and demand will further outstrip supply.

Reversing the tide to increase the pool of workers, while no easy task, is imperative. This task should begin with extending home care workers the right to protection under the FLSA, our nation’s most basic labor law.

End Notes

¹ 551 U.S. 158 (2007).

² 29 U.S.C. §§ 201–219.

³ H.R. 3582, 110th Cong. (2007) (Prepared Statement of Hon. Lynn C. Woolsey, Chairwoman, Subcommittee on Workforce Protections at 3) [hereinafter Woolsey Statement].

⁴ *Long Island Care at Home*, 551 U.S. at 164.

⁵ *Id.* at 174.

⁶ Linda Delp & Katie Quan, *Homecare Worker Organizing in California: An Analysis of a Successful Strategy*, 27 Lab. Stud. J., Spring 2002, at 1, 3; U.S. Gen. Accounting Office, *Long-Term Care: Some States Apply Criminal Background Checks to Home Care Workers 2* (1996) [hereinafter Long-Term Care].

⁷ Bureau of Labor Statistics, U.S. Dep’t of Labor, Occupational Outlook Handbook, 2008–09 Edition (Personal and Home Care Aides) 2 [hereinafter BLS, Personal and Home Care Aides] (documenting 767,000 personal and home aides); Bureau of Labor Statistics, U.S. Dep’t of Labor, Occupational Outlook Handbook, 2008–09 Edition (Nursing, Psychiatric, and Home Health Aides) 2 [hereinafter BLS, Home Health Aides] (documenting 787,000 home health aides).

⁸ BLS, Personal and Home Care Aides, *supra* note 7, at 2.

⁹ BLS, Home Health Aides, *supra* note 7, at 3.

¹⁰ Bureau of Labor Statistics, U.S. Dep’t of Labor, Occupational Outlook Handbook, Tomorrow’s Jobs 5, Chart 7.

¹¹ Bernadette Wright, AARP Public Policy Institute, *Direct Care Workers in Long-Term Care 2* (2005).

¹² *Id.* at 1 (“30.5% of home-care aides . . . work part time.”).

¹³ *Id.* at 2 (reporting annual earnings, based on a 30-hour week, of \$12,558 for personal and home-care aides, and \$13,650 for home-health aides).

¹⁴ Bureau of Labor Statistics, U.S. Dep’t of Labor, *Occupational Employment and Wages* Table 1 (2003).

¹⁵ Steve Dawson & Rick Surpin, *Direct Care Health Workers: The Unnecessary Crisis* 6 (2001); Rebecca Donovan, “We Care for the Most Important People in Your Life”: *Home Care Workers in New York City*, 1/2 Women’s Studies Q. 56, 62 (1989); Debra Lipson & Carol Regan, *Health Insurance Coverage for Direct Care Workers: Riding Out the Storm* (2004).

¹⁶ BLS, Personal and Home Care Aides, *supra* note 7, at 2; BLS, Home Health Aides, *supra* note 7, at 3.

¹⁷ Dawson & Surpin, *supra* note 15, at 12.

¹⁸ *Id.*

¹⁹ Patricia Mulkeen, Note, *Private Household Workers and the Fair Labor Standards Act*, 5 Conn. L. Rev. 623, 626 (1973).

²⁰ 29 U.S.C. §§ 206(f)(1), 207(l).

²¹ 29 U.S.C. § 213(a)(15).

²² *Long Island Care at Home, Ltd. v. Coke*, Brief of Law Professors and Historians as *Amici Curiae* in Support of the Respondent at 12–13.

²³ Application of the Fair Labor Standards Act to Domestic Service, 66 Fed. Reg. 5481, 5482 (proposed Jan. 19, 2001) [hereinafter FLSA Application] (quoting Sen. Williams during the 1974 FLSA Amendments).

²⁴ *Long Island Care at Home*, Brief of Law Professors and Historians, *supra* note 22, at 4–11.

²⁵ *Long Island Care at Home, Ltd. v. Coke*, Brief of the Urban Justice Center et al. as *Amici Curiae* in Support of the Respondent at 7 (referencing Rhonda Montgomery, et al., *A Profile of Home Care Workers from the 2000 Census: How It Changes What We Know*, 45 Gerontologist 593 (2005)).

²⁶ Wright, *supra* note 11, at 1.

²⁷ FLSA Application, *supra* note 23, at 5482.

²⁸ *Id.*

²⁹ 29 C.F.R. § 552.6.

³⁰ 29 C.F.R. § 552.109(a).

³¹ *Long Island Care at Home*, 551 U.S. at 174.

³² H.R. 3582, 110th Cong. (2007) (Prepared Statement of Craig Becker, Associate General Counsel, Service Employees International Union at 15) [hereinafter Becker Statement].

³³ Woolsey Statement, *supra* note 3, at 3; Becker Statement, *supra* note 32, at 16.

³⁴ *Id.*

³⁵ *Long Island Care at Home, Ltd. v. Coke*, Brief *Amici Curiae* of AARP and Older Women’s League in Support of the Respondent at 13 (referencing Better Jobs Better Care, *The Cost of Frontline Turnover in Long-Term Care* (Oct. 2004)).

³⁶ Montgomery et al., *supra* note 25, at 595.

- ³⁷ Dawson & Surpin, *supra* note 15, at 12; Robyn Stone, *Long-Term Care Workforce Shortages: Impact on Families 2* (2001); *Long Island Care at Home*, Brief of AARP and Older Women's League, *supra* note 35, at 8.
- ³⁸ General Accounting Office, *Nursing Workforce Recruitment and Retention of Nurses and Nurse Aides Is a Growing Concern* 13 (2001).
- ³⁹ Dep't of Health & Human Services, *Nursing Aides, Home Health Aides, and Related Health Care Occupations—National and Local Workforce Shortages and Associated Data Needs 10* (2004) [hereinafter Dep't of Health & Human Services, *Home Health Aides*].
- ⁴⁰ *Long Island Care at Home*, Brief of AARP and Older Women's League, *supra* note 35, at 4.
- ⁴¹ Office of the Assistant Secretary for Planning & Evaluation, U.S. Dep't of Health & Human Servs., *The Future Supply of Long-Term Care Workers in Relation to the Aging Baby Boom Generation: Report to Congress* 4 (2003).
- ⁴² Wahn He et al., *65+ in the United States: 2005*, 1.
- ⁴³ Douglas A. Wolf, *The Family as Provider of Long-Term Care: Efficiency, Equity, and Externalities*, 11 *J. Aging Health* 360, 366 (1999).
- ⁴⁴ *Long-Term Care*, *supra* note 6, at 4.
- ⁴⁵ Nora Super, National Health Policy Forum Background Paper, *Who Will Be There to Care? The Growing Gap between Caregiver Supply and Demand* 3 (Jan. 23, 2002).
- ⁴⁶ Robyn Stone, *Long-Term Care Workforce Shortages: Impact on Families 1* (2001); James Cooper & Diane Cooper, *Crisis in Workforce Supply—Read All About It!*, 25 *Annals of Long-Term Care* 23, 23 (2005); Susan Harmuth, *The Direct Care Workforce Crisis in Long-Term Care*, 63 *N.C. Med. J.* 87, 93 (2002); Stone, *supra* note 37, at 1.
- ⁴⁷ *Training Quality Home Care Workers* 3 (2003). While researchers agree that turnover in home care is a major problem, estimates of the problem vary. See, e.g., Dawson & Surpin, *supra* note 15, at 1 (reporting turnover rates among direct-care workers ranges between 40 and 100 percent annually); *Long-Term Care: Confronting Today's Challenges* 1 (2003), (reporting a 28 percent turnover rate for home health aides).
- ⁴⁸ Harmuth, *supra* note 46, at 89.
- ⁴⁹ Stone, *supra* note 37, at 6; Dep't of Health & Human Services, *Home Health Aides*, *supra* note 39, at v.
- ⁵⁰ Ron Osterhout & Rick Zawadski, *On Homecare Workforce*, 64 *Pol'y & Prac. Pub. Hum. Services* 30, 30 (2006).
- ⁵¹ *Long Island Care at Home*, Brief of AARP and Older Women's League, *supra* note 35, at 15.
- ⁵² S.B. 2061, 110th Cong. (2007).
- ⁵³ *Id.*
- ⁵⁴ 29 U.S.C. § 207(a)(1).
- ⁵⁵ S.B. 2061, *supra* note 52.
- ⁵⁶ 29 U.S.C. § 213(b)(21).
- ⁵⁷ 29 C.F.R. § 785.22.
- ⁵⁸ 29 C.F.R. § 785.23.
- ⁵⁹ 67 Fed. Reg. 16668 (2002).
- ⁶⁰ 29 C.F.R. § 552.6.
- ⁶¹ *Id.*
- ⁶² *Id.*
- ⁶³ FLSA Application, *supra* note 23, at 5484.
- ⁶⁴ *Id.*
- ⁶⁵ *Id.*
- ⁶⁶ *Id.*
- ⁶⁷ *Id.*
- ⁶⁸ 29 C.F.R. § 552.6.
- ⁶⁹ FLSA Application, *supra* note 23, at 5485.
- ⁷⁰ *Id.*
- ⁷¹ S. Rep. No. 93-690, at 20 (1974) (emphasis added); see also H.R. Rep. No. 93-913, at 35 (1974); S. Rep. No. 93-300, at 22 (1973).

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