

May 13, 2014

The Honorable Thomas E. Perez
Secretary
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

Dear Secretary Perez:

We, the undersigned organizations -- representing a broad coalition of stakeholders including direct care worker organizations, disability and consumer advocates, organized labor and other worker allies -- write to express our support for the U.S. Department of Labor's final rule "Application of the Fair Labor Standards Act (FLSA) to Domestic Service" and its current effective date on January 1, 2015. We strongly oppose efforts to delay the implementation period beyond that date.

In October 2013, the Department published a new rule extending federal minimum wage and overtime protections to home care workers—the culmination of years of research and analysis and after revisions based on extensive public comments. President Obama announced the proposed rule changes in December, 2011, putting all stakeholders on notice that changes were coming regarding the treatment of home care workers under FLSA. Unlike most rules, which take effect within 60 days of publication, the Department delayed implementation until January 2015, giving all stakeholders 15 months to comply. This extraordinary step was taken in recognition of the complex interplay between the new rule and state Medicaid programs which fund the majority of these services.

As the new rule notes, home care workers, who perform vital services assisting elders and people with disabilities with dressing, bathing, and many other daily needs, have waited decades for basic labor protections even as the industry that employs them has grown and matured. They have been underpaid and undervalued as they performed work that has helped each individual and family it sustains immeasurably. Yet, these workers are barely able to sustain their own families on the wages they earn: half live in households that rely on public benefits such as Medicaid, food stamps, and housing assistance. Extending federal oversight and minimum labor protections to home care workers will help to lay a foundation for improving the quality of these jobs as our country's demand for in-home services and supports grows.

In developing the new rules, the Department anticipated that changes in policy and practice would need to be made to implement minimum wage and overtime protections for home care workers. Yet given the examples from the 16 states that already provide wage and hour protections to home care workers under state law and agency employers who pay overtime as a matter of corporate policy, we know that implementing the new rule is feasible and the associated costs manageable.

Despite claims to the contrary, all known data point to a low incidence of overtime hours amongst this workforce. Further, there is no evidence to support the fear that guaranteeing minimum wage and overtime for home care workers will result in higher rates of institutionalization.¹ Incurring high overtime costs or capping service hours below needed levels are not problems caused by the rule itself, but rather problems with how a state might choose to respond to and implement the rule.

As with any change, there are always those who protest that they require more time in order to study the issue more carefully or to fine tune adjustments to policy. The final rule provided that time by delaying the effective date for 15 months. Over the last six months, some states have been proactive in seeking the guidance of the DOL to better understand the implications on their consumer-directed programs. In other cases, states have chosen not to include the additional costs of this rule in their current budget proposals. In either case, the responses have been state-specific, and there is no guarantee that they will take the necessary action to prepare for implementation, even given additional time beyond January 2015.

The groups currently advocating to delay implementation are those who were among the most vocal opponents to the rulemaking in the first place. But, after 40 years of exemption from core labor protections and decades of stops and starts in ending this egregious exclusion, justice delayed has been justice denied long enough for the two-million-plus home care workers who will benefit from the rule. Enough is enough.

¹ PHI (January 2013) DATA BRIEF: Institutionalization Rates in States that Extend Minimum Wage and Overtime Protection to Home Care Workers, available at:

<http://phinational.org/sites/phinational.org/files/research-report/institutionalization-data-brief.pdf>

PHI (March 2013) DATA BRIEF: Michigan Home Care Industry Growth Before and After Extending Labor Protections to Home Care Aides, available at:

<http://phinational.org/sites/phinational.org/files/michigan-labor-protections-and-home-care-industry.pdf>

America's home care workers have waited long enough for the basic labor protections that virtually all other workers receive. With over a million new home care workers needed to care for an aging America and the growing number of people of all ages with disabilities—better jobs are the only way to build a quality workforce and ensure quality care.

We urge you to move forward with the new rule and maintain the implementation timeline of January 1, 2015 as included in the rule.

Thank you for your consideration,

AFL-CIO

American Federation of State, County and Municipal Employees (AFSCME)

Caring Across Generations

Direct Care Alliance

Hand in Hand: The Domestic Employers Network

Interfaith Worker Justice

National Council of La Raza (NCLR)

National Domestic Workers Alliance

National Employment Law Project

PHI – Quality Care through Quality Jobs

The National Consumer Voice for Quality Long-Term Care