

After a hard-fought legal battle, nearly two million home care workers in the United States have secured their right to critical federal minimum wage and overtime protections. This win for home care workers and advocates comes at the conclusion of a long legal battle challenging the Department of Labor's (DOL) 2013 regulation to grant minimum wage and overtime protections to home care workers who help the elderly and people with disabilities live with dignity in their homes.<sup>1</sup> The DOL began enforcing this new rule on November 12, 2015.

## WHAT NEW RIGHTS DO HOME CARE WORKERS HAVE?

Under the Home Care Final Rule most home care workers will be entitled to receive:\*



**Minimum wage:** Payment of at least the federal minimum wage, currently \$7.25 an hour, for all hours worked. If a worker's **state minimum wage** is higher and the state minimum wage law covers home care workers, she is entitled to the higher minimum wage.<sup>2</sup>



**Overtime pay:** Workers must be paid at least 1.5 times their regular hourly rate of pay after working over 40 hours in a workweek.<sup>3</sup>



**Time tracking:** Employers must keep track of and record a worker's weekly hours, pay earned, and wage deductions.<sup>4</sup>



**Travel time compensation:** Compensation for travel time spent for work-related purposes. Compensation is required for work-related travel during the workday (i.e. from one consumer's house to another), not travel time to and from the worker's home.<sup>5</sup>



**Federal oversight:** Home care workers now have federal labor protections and can go to the DOL for any labor violation claims such as wage theft, misclassification, or discrimination.

\* This federal rule applies to most home care workers employed by a home care agency or another employer who were previously not covered under the FLSA under the "companionship exemption." Home care workers employed by the person they assist or that person's family or household may be covered under the new rule depending on the nature of their work. For more information see the U.S. Department of Labor website.

## ARE YOU ENTITLED TO THESE LEGAL PROTECTIONS?

Take the **DOL's quiz** to help determine if these changes apply to you.

### WHO ARE HOME CARE WORKERS?

Home care workers provide individual care to elderly adults and assist people with disabilities with daily living tasks. These workers are disproportionately immigrant women and women of color. Latinos are overrepresented among home care workers compared to their representation in the workforce; Latinos are 21% of home care workers compared to 16% of the total workforce.<sup>6</sup> In recent years, home care has transformed into a multibillion-dollar industry that is projected to keep growing as the U.S. population ages.<sup>7</sup> By 2022, the home care industry is predicted to grow by nearly half a million jobs, a rate of 48%—much faster than the growth rate of 11% for all occupations.<sup>8</sup>

Despite physically and emotionally demanding work, compensation is low, resulting in an industry with high turnover. Poverty-level wages undermine the economic security of workers and their families and are not commensurate to the value home care workers provide. Home care workers make an average of \$18,598 per year.<sup>9</sup>

### WHY DID IT TAKE SO LONG FOR HOME CARE WORKERS TO GET THESE RIGHTS?

Home care workers were excluded from the 1974 update to the Fair Labor Standards Act (FLSA) that expanded labor protections to other types of domestic workers. The FLSA is the federal labor law enacted in 1938 that established the minimum wage and overtime protections. When Congress amended the FLSA in 1974, it excluded “companions” from basic minimum wage and overtime protections. These companions were intended to be “casual” babysitters and workers who provided “companionship services” to the elderly and infirm, “not the sole breadwinners or [those] responsible for their family’s support.”<sup>10</sup>

Home care workers have since struggled to gain recognition and legal protections. In September 2013, the DOL issued new regulations to cover most home care workers under the FLSA. The regulations were set to be implemented in January 2015 but were delayed due to legal challenges by home care business associations. In August 2015, the regulations were upheld by the U.S. Court of Appeals for the D.C. Circuit, allowing them to take effect.

“We believe the Rule is the right policy—both for those employees, whose demanding work merits these fundamental wage guarantees, and for recipients of services, who deserve a stable and professional workforce allowing them to remain in their homes and communities.”

—DOL<sup>11</sup>

The appeals court’s decision means that home care workers will, for the first time in four decades, be recognized as workers worthy of the same basic overtime and minimum wage protections extended to most other workers. The DOL has stood strongly behind its January rule to address poverty-level wages and a lack of overtime compensation for home care workers. The DOL has provided and will continue to offer technical assistance to states and employers to take the necessary steps toward implementing the rule.

## WHERE CAN I FIND MORE RESOURCES?

### Department of Labor (DOL)

- Am I entitled to federal minimum wage and overtime pay?
- Where can I find out more about home care worker rights?
- What if I'm not being paid properly?

### National Employment Law Project (NELP)

- What's next for home care workers, consumers, and employers?

### National Domestic Workers Alliance (NDWA)

- What are my new rights as a home care worker?

### Paraprofessional Healthcare Institute (PHI)

- Where can I find an implementation guide for the home care rule?

## ENDNOTES

- 1 U.S. Department of Labor, "Minimum Wage and Overtime Pay for Direct Care Workers," <http://www.dol.gov/whd/homecare/> (accessed October 2015).
- 2 U.S. Department of Labor, "What are the minimum wage and overtime pay protections?" <http://www.dol.gov/whd/homecare/workers-what-are-protections.htm> (accessed October 2015).
- 3 Ibid.
- 4 U.S. Department of Labor, *Fact Sheet # 79D: Hours Worked Applicable to Domestic Service Employment Under the Fair Labor Standards Act (FLSA)*, (Washington, DC: U.S. Department of Labor), <http://www.dol.gov/whd/regs/compliance/whdfs79d.htm> (accessed October 2015).
- 5 U.S. Department of Labor, "Travel Time," [http://www.dol.gov/whd/homecare/travel\\_time.htm](http://www.dol.gov/whd/homecare/travel_time.htm) (accessed October 2015).
- 6 NCLR, *Monthly Latino Employment Report: Hispanic Home Care Workers* (Washington, DC: NCLR, 2013), <http://publications.nclr.org/handle/123456789/1059> (accessed September 2015).
- 7 Federal Interagency Forum on Aging-Related Statistics, "Population age 65 and over, selected years 1990-2000 and projected 2020-2050," [http://www.agingstats.gov/Main\\_Site/Data/2012\\_Documents/Population.aspx](http://www.agingstats.gov/Main_Site/Data/2012_Documents/Population.aspx) (accessed October 2015).
- 8 Bureau of Labor Statistics, U.S. Department of Labor, *Occupational Outlook Handbook, 2014-15 Edition, Home Health Aides*, <http://www.bls.gov/ooh/healthcare/home-health-aides.htm> (accessed October 2015).
- 9 National Employment Law Project, *Giving Caregivers a Raise: The Impact of a \$15 Wage Floor in the Home Care Industry*, (Washington, DC: National Employment Law Project, 2015), <http://www.nelp.org/content/uploads/2015/03/Giving-Caregivers-A-Raise.pdf> (accessed November 2015).
- 10 U.S. Senate, Report No. 93-690 (1974), 20.
- 11 U.S. Department of Labor, "U.S. Court of Appeals Unanimously Upheld DOL Rule, Opinion Effective as of Oct. 13, 2015," <http://www.dol.gov/whd/homecare/litigation.htm> (accessed October 2015).