

National Coalition for Immigrant Women's Rights

February 16, 2012

Mary Ziegler, Director
Division of Regulations, Legislation, and Interpretation
Wage and Hour Division
U.S. Department of Labor, Room S-3502
200 Constitution Avenue NW.
Washington, DC 20210

RE: Proposed Rulemaking, Application of the Fair Labor Standards Act to Domestic Service Rule (RIN 1232-AA05)

Dear Ms. Ziegler,

The National Coalition for Immigrant Women's Rights (NCIWR) is pleased to submit the following comments in strong support of the rule proposed by the Department of Labor (Department) to amend the Fair Labor Standards Act (FLSA) regulations to extend basic labor protections—minimum wage and overtime premium pay—to nearly 1.8 million low-wage home care workers.¹ NCIWR's more than fifty member organizations, including steering committee members National Asian Pacific American Women's Forum (NAPAWF) and National Latina Institute for Reproductive Health (NLIRH), work to promote the equal rights of immigrant women—a population that is substantially represented among domestic workers. This proposed rule will advance economic security and fair pay for women, especially women of color, as well as improve quality of much-needed care for elderly and disabled populations.

More than nine out of ten workers in the rapidly growing home care industry are women, disproportionately women of color. Indeed, studies show that in some areas domestic workers are primarily immigrant women. Of the approximately 200,000 domestic workers in New York City, 99% are foreign-born and 76% are not U.S. citizens, according to one study.² Similarly, about 90,000 domestic workers are employed in the Los Angeles metropolitan area, of which an estimated 70% are individuals without immigration status.³ Many of the women working in this sector are primary income earners for their families who struggle to survive on median annual wages of less than \$21,000 for full-time work, less than the Federal Poverty Guideline for a family of four.⁴

¹ Solis, Hilda (Secretary). *Providing Protections for In-Home Care Workers*. WORK IN PROGRESS (THE OFFICIAL BLOG OF THE U.S. DEPARTMENT OF LABOR), Dec. 15, 2011, available at <http://social.dol.gov/blog/providing-protections-for-in-home-care-workers/>.

² DOMESTIC WORKERS UNITED. HOME IS WHERE THE WORK IS: INSIDE NEW YORK'S DOMESTIC WORK INDUSTRY, July 14, 2006, at <http://www.domesticworkersunited.org/media/files/266/homeiswheretheworkis.pdf>.

³ Crary, David (Associated Press). *Domestic workers labor in the shadows*. L.A. TIMES, Nov. 4, 2007, available at <http://articles.latimes.com/2007/nov/04/news/adna-maidshadows4>.

⁴ Solis, *supra* note 1.

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Home care workers provide a lifeline for the elderly and people with disabilities, yet for decades their stressful and physically demanding jobs have come without the basic protections of the federal minimum wage and overtime laws. As demands for home care grow due to the country's increasing aging population, it is imperative to ensure that the number of workers in this sector is maintained, if not expanded, and that the quality of care is assured. Extending FLSA protections to workers who were excluded under the broad "companionship services" definition will help further these aims because increased wages, improved distribution of working hours, and coverage for travel time will help make domestic care a more attractive field of work. Improving the working conditions of home care workers will reduce turnover in the sector, encourage retention, and improve continuity of care for individuals and families receiving these services. These protections will also help women working in the domestic sector and their families live safe, healthy, and dignified lives.

In finalizing the rule, we encourage you to consider the following:

29 CFR Section 552.6 *Companionship services for the aged or infirm.*

- We support the Department's recognition that individuals contracted to provide companionship services sometimes find themselves providing a great deal of housekeeping services. Although certain housekeeping services are directly related to companionship services, there is a delicate balance to be struck between the amount and type of housekeeping services, on the one hand, and the contracted-for companionship services, on the other. Some of the proposed modifications to the current rule reflect the Department's tacit acknowledgement that domestic workers at times suffer serious mistreatment and abuse, including being subject to trafficking or forced labor. However, we encourage the Department to include in the rule an explicit discussion of the difference between domestic work and human trafficking.

While a third-party employer or agency is often the source of trafficked or forced labor, an individual domestic worker's family may also be in this position.⁵ A woman may voluntarily provide domestic companionship services at the outset, but eventually find herself being forced to work under extreme and inhumane conditions.⁶ This situation may result because of unclear expectations of the work to be performed and inadequate information about the right of domestic workers to meals, breaks, and days off.

- In some immigrant communities, cultural understandings of family responsibility and duty may generate expectations that younger individuals provide care for older and/or disabled relatives or friends. Such care may be broad in scope—i.e., ranging from helping with housekeeping services that are not exempt from the FLSA to companionship services that are.

⁵ NATIONAL ASIAN PACIFICAN AMERICAN WOMEN'S FORUM. RIGHTS TO SURVIVAL & MOBILITY: AN ANTI-TRAFFICKING ACTIVIST'S AGENDA (2008), available at http://napawf.org/wp-content/uploads/2009/10/AT_Agenda.pdf.

⁶ *Id.* at 5.

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In the context of care for family members or friends, some individuals may not feel comfortable receiving remuneration for assisting relatives. This may be the case even though many state programs specifically recognize and remunerate this work, if the care recipient requests that a family member or friend provide his/her care. Despite potential reluctance to receive pay, there should be culturally sensitive and linguistically appropriate information about this option made available so that individuals can know of their right to compensation. This information will not force an individual to request or accept remuneration that she may not feel comfortable receiving, but it may help individual domestic workers learn about potential payment through public programs such as Medicaid or Medicare. It may also help them identify if they are in a trafficking situation.

29 CFR Section 552.109 *Third Party Employment*

- We support the Department's revision of Section 552.109, which will restore FLSA protections to home care workers employed by third party employers many of whose employees were already covered by the FLSA before the 1974 amendments but unfortunately lost those protections under the regulation implementing a statute intended to extend coverage to domestic workers.

Although the current third-party employment provision was upheld by the Supreme Court's decision in *Long Island Care at Home, Ltd., et al. v. Coke*, the Court viewed the current third party employment regulation as reasonable gap-filling by the agency and explicitly recognized that the Department may change its position over time.⁷

In addition, providing minimum wage and overtime protection to home care workers will not be cost-prohibitive for third-party agencies. In fact, it will benefit employers, workers, *and* recipients of care by making the industry more attractive to qualified professionals and reducing turnover.

29 CFR Sections 552.102 and 552.110 *Live-in Domestic Service Employees*

- As discussed above, distinctions regarding forced labor working conditions should be explicitly discussed in the context of domestic work. While many workers in this sector are working voluntarily, others are not. In some cases, an immigrant woman is trafficked specifically for the purposes of becoming a domestic worker. This may be particularly the case for a live-in worker, who may "simply" be overworked by the household she works in or even be "leased out" to other households.⁸

In addition to the above recommendations, we encourage the Department to consider the important role of cultural and linguistic competency in home care, whether in companionship care or more specialized medical care. The Department should recognize that linguistically and culturally appropriate services are vital to ensuring quality healthcare is provided; for instance, in some cases, a limited English proficient individual may require the assistance of a bilingual care provider, particularly to ensure that

⁷ *Long Island Care at Home, Ltd., et al. v. Coke*, 551 U.S. 158, 170–71 (2007).

⁸ DOMESTIC WORKERS UNITED *supra* note 2, at 6.

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medications are taken as directed and other medical care recommendations from a provider are followed. We recognize that appropriately valuing linguistic and cultural services may have financial costs—a major concern for care recipients, as well as for the government, considering the elevated proportion of home health care covered by publicly-financed programs. However, it is a positive sign for costs that home care workers—including auxiliary health workers, such as home health aides and personal care aides—include substantial proportions of women of color, many of whom may be bilingual. Paired with commitments to increasing diversity in the medical and medical support professions, the cost of ensuring that language and culture are recognized as vital components of quality healthcare should not be excessively burdensome. This is particularly the case given how beneficial culturally and linguistically competent care is to home care recipients.

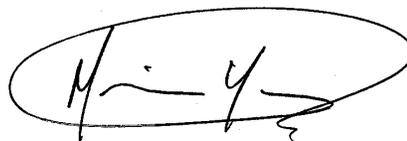
NCIWR aims to ensure that immigrant women are treated fairly and with respect, and that they are able to access the resources necessary to improve their lives and the lives of their families. The modifications to the FLSA regulations proposed by the Department will affect many immigrant women because of their disproportionately high representation in the domestic work sector. The narrowed “companionship services” exemption, among other changes, will allow more immigrant women working in the domestic services sector to enjoy minimum wage and/or overtime pay. And at the same time as the providers of home care are disproportionately women of color, demographic change means that recipients of home care will increasingly also be people of color, including immigrants. NCIWR is committed to helping ensure that all individuals receive quality healthcare, and we believe that the extension of FLSA protections to an increased number of home care providers will be beneficial to the consumers of these services. There is a high rate of turnover in the home care field, mainly caused by low wages, insufficient hours, and lack of reimbursement for travel costs. High turnover disrupts continuity and quality of care for customers and places great financial burdens on agencies and state and federal governments. By increasing wages, encouraging more even distribution of work hours, and requiring reimbursement for travel costs, the proposed rule will reduce turnover and promote better outcomes for both home care workers and the individuals and families they serve.

We applaud the Department for proposing regulations that will finally extend basic legal protections to home care workers who for too long have been underpaid and undervalued. The National Coalition for Immigrant Women's Rights greatly appreciates this opportunity to comment.

Sincerely,



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National Latina Institute for Reproductive Health



Miriam Yeung
Executive Director
National Asian Pacific American Women's Forum