

Information about In-Home Supportive Services (IHSS) Overtime and Related Changes (Updated November 4, 2015)

DSS Announces Overtime Payments and Workweek Limitations to Start Feb. 1, 2016

Nov. 4, 2016 Announcement from California Department of Social Services:

Due to recent court action, California is moving ahead to meet federal regulations that require the payment of overtime wages for certain home care workers who work more than forty hours in a workweek. These workers in California include providers of In-Home Supportive Services (IHSS), waiver personal care services, and certain assistive services for developmentally disabled individuals. State law provides mechanisms for payments and establishes caps on the number of hours that a provider may work within a given workweek.

Following consultation with consumer advocates and unions representing providers, the Administration is moving forward on a variety of activities that together will enable the payment of overtime wages in biweekly payrolls beginning on February 1, 2016. These activities include:

- Updating the timesheets used in these programs to enable the capture of hours worked in excess of forty hours per workweek,*
- Training the State's nearly 400,000 service providers and 500,000 home care services recipients in how to fill out and approve the new timesheets,*
- Implementing workweek agreements for providers serving multiple consumers,*
- Preparing county staff to assist with workweek agreements and resolve timesheet errors,*
- Finalizing changes to the automated case management and payroll system to enable overtime payments, and*
- Adding a new IHSS service category for accompaniment to medical appointments, and enabling payment for travel incurred while serving multiple recipients on the same day.*

In addition to the activities above, recipients and providers will be notified of associated program changes in advance of the February 1 date, to allow time for them to identify additional service providers if necessary. As many providers serve and are paid in more than one program under the home care service system, all programs will commence regular payment of overtime and travel on February 1, 2016.

The State is committed to moving forward expeditiously on these activities, in a manner that is safe for consumers, fair to providers, and minimizes disruption to the paychecks upon which so many Californians depend.

DRC reacts to home care overtime implementation in California

The new rules will not affect most IHSS recipients, whose providers do not work enough hours per week to receive overtime. The rules will also help some consumers by increasing their providers' pay—which may help reduce turnover, make IHSS work more appealing to job seekers, and raise family income. Some recipients may be harmed, however when workweek limitations go into effect. Disability Rights California has been advocating for changes to the state rules that would limit overtime since 2014 when they were enacted. We have been working to ensure that consumers who share a provider, consumers who receive services through the Nursing Facility/Acute Hospital and In Home Operations Waivers, and consumers who receive Supported Living Services are not adversely affected by the federal or state rules. We will post additional information when it becomes available.

Home-care worker pay dispute reaches Court

Posted Thu, September 24th, 2015 9:46 pm by Lyle Denniston, *Independent Contractor Reporter*, From SCOTUS Blog:

Arguing that millions of elderly and disabled individuals who need health care and other help in their homes will not be able to afford it, the home care industry urged the Supreme Court on Thursday to overturn new government rules that will raise the pay and limit the hours of domestic workers. The application (15A326) is [here](#), and the appendix with lower court rulings is [here](#).

The request puts before the Supreme Court exactly the reverse of the situation it faced eight years ago, when it turned down a home care worker's plea to be paid a minimum wage as well as pay for overtime. That came in the unanimous ruling in *Long Island Care at Home v. Coke*. The Labor Department changed its mind two years ago, taking away the exemption from wage-and-hour law that domestic workers had had since 1975 — if such workers are hired by a company, and not by the patient or his family.

The three trade groups — Home Care Association of America, International Franchise Association, and National Association for Home Care and Hospice — filed their plea with Chief Justice John G. Roberts, Jr., who handles emergency matters from the District of Columbia. The U.S. Court of Appeals for the D.C. Circuit upheld the new regulations last month; the change is scheduled to go into effect on October 13.

The Chief Justice has the option of acting on the application on his own, or of sharing it with his colleagues. No action is likely until the Labor Department gets a chance to reply.

The department reversed course on the issue after concluding that home care has changed markedly, with fewer elderly and disabled individuals going to nursing homes or other institutional providers, and opting instead to remain in their homes and get their assistance there.

At issue are rules that apply to two categories of domestic workers: those who provide "companionship services" by visiting the home, and those who do so while living in the home. Those workers will be eligible for minimum wages or overtime pay if they are employees of a business or other outside provider. The new rules will not apply to those who are hired directly by the person being served or by his family; those workers will remain exempt.

The filing in the Supreme Court argued that the change in the rules marks the first time in the seventy-seven-year history of federal wage-and-hour law that an entire group of employers has been denied the exemption that they had long had. In upholding the loss of the exemption, the application said, the D.C. Circuit "stands on its head" the Supreme Court's 2007 ruling in the *Long Island Care* case.

The D.C. Circuit, the trade groups said, interprets that ruling to compel court approval of the first-ever exclusion of a class of employers.

The actual impact of the new rules, if allowed to stand, will be to "severely disrupt the ability of home care employers to provide companionship services to millions of elderly and disabled individuals." Because Medicaid funding, for the elderly and the poor, is not available in many states to support the increased costs of the new rule, the application said, "many elderly and disabled consumers would be unable to maintain desperately needed access to home care" when the new rules go into effect.

The trade groups noted that the impact of the new rule was recognized by a federal trial judge who blocked the new rules, only to be overturned by the D.C. Circuit.

The groups' lawyers said that, if the Court wants the case to be moved on an expedited basis, they will file their formal petition for review promptly.

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Recommended Citation: Lyle Denniston, *Home-care worker pay dispute reaches Court*, SCOTUSblog (Sep. 24, 2015, 9:46 PM), <http://www.scotusblog.com/2015/09/home-care-worker-pay-dispute-reaches-court/>

Federal Appeals Court reverses Lower Court ruling on home care overtime giving U.S. Department of Labor victory – Case will likely be appealed to U.S. Supreme Court

Below article as originally published on Marty Omoto's Free CDCAN Reports and Alerts email August 21, 2015

SACRAMENTO, CA [CDCAN – LAST UPDATED 08/21/2015 08:45 AM] – A federal appeals court in Washington DC today issued a decision siding with the US Department of Labor on the issue of overtime for previously exempted home care workers, reversing a lower federal court ruling that struck down regulations that required it, in a 24 page opinion. The three panel federal appeals court issued an order today that said "... On consideration thereof, it is ORDERED and ADJUDGED that the judgment of the District Court appealed from in this cause is hereby reversed and the case is remanded for the entry of summary judgment in favor of the Department, in accordance with the

opinion of the court filed herein this date." The appeals court is delaying for seven days the filing or implementation of its decision to allow the losing party – in this case the organizations who filed the lawsuit including the lead plaintiff Home Care Association of America, to file an appeal to either the three panel appeals court to reconsider its decision, or seek a hearing of this issue before the entire US Court of Appeals for the District of Columbia Circuit. Those filing the lawsuit could also seek to appeal to the US Supreme Court. CDCAN will issue a report later this morning with an analysis of the opinion and further next steps and impact.

IMPACT IN CALIFORNIA

While overtime for In-Home Supportive Services (IHSS) and other Medicaid (Medi-Cal) funded home care services including supported living services was funded in the 2015-2016 State Budget, implementation has been delayed pending a final action in the lawsuit that initially last January struck down the federal regulations requiring over time for previously exempted home care workers, effective January 1, 2015. Overtime implementation will not happen until the appeals process has run its course, which will likely take several months and likely into early next year if the US Supreme Court decides to take the case.

CDCAN - MARTY OMOTO YOUTUBE CHANNEL

A CDCAN (Marty Omoto, family member and advocate) youtube channel was set up and has several videos dealing with current – and previous state budget issues, disability and senior rights, and advocacy. To see the current videos, including March 2014 San Andreas Regional Center Aptos Legislative Breakfast, January 2014 panel discussion on services for adults with autism spectrum and related disorders in Palo Alto, and older videos including video of April 2003 march of over 3,000 people with developmental disabilities, families, providers, regional centers and others from the Sacramento Convention Center to the State Capitol (to attend and testify at budget hearing on proposed massive permanent cuts to regional center funded services, go to the CDCAN (Marty Omoto) Channel at: <https://www.youtube.com/channel/UCFySEyhn9LQRiCe-F7ELhg>

More videos – including new current videos (an interview with longtime advocate Maggie Dee Dowling is planned, among others) – plus archive videos of past events – will be posted soon.

BACKGROUND OF IHSS OVERTIME RULES

On October 1, 2013, the United States Department of Labor issued new regulations that changed the way home care workers must be paid, including payment for overtime, wait time, and travel time. In response, the State of California agreed to pay overtime, wait time, and travel time for In-Home Supportive Services (IHSS) and Waiver Personal Care Services (WPCS) workers, but imposed limits on how many hours per week they can work.

On December 22, 2014, a judge in a Washington DC federal court vacated part of the federal rule. On January 14, 2015, he vacated the rest of the rule. The Department of Labor has filed an appeal to the U.S. Court of Appeals for the District of Columbia Circuit. We will post new information when it is available. On January 15, the Department of Social Services said that it will "halt" implementation of the new rules regarding overtime, wait time, and travel time. **This means that IHSS will continue as it was in 2014-- workers will not receive overtime pay and their hours will not be limited to 61-66 per week.** Information from the California Department of Social Services is here:

January 23, 2015 All-County Letter: <http://www.cdss.ca.gov/lettersnotices/entres/getinfo/acf/2015/15-10.pdf>

DSS January 15 Media Release (pdf) or Accessible version

DSS January 15 Letter to IHSS Recipients and Providers

If an appeal is successful and the federal rule goes into effect, it will mean that in California, individuals who provide In-Home Supportive Services (IHSS), Waiver Personal Care Services (WPCS), and Supported Living Services (SLS) will be entitled to overtime pay (one and one-half times their regular hourly wage) when they work more than 40 hours per week, payment for wait time and for travel time. There are limits to what workers will get paid. For more information about state changes, see DRC Publication (Oct. 2014) New Rules for IHSS: Overtime & Related Changes - October 2014 or view as a PowerPoint Presentation

For more information about the federal case, see the following information:

District Court Opinion (Jan. 14, 2015)

Marty Omoto (CDCAN) State Update January 15 2015 including text of Order

Statement from the U.S. Department of Labor (Jan. 14, 2015): <http://www.dol.gov/whd/homecare/litigation.htm>

DDS letter re Supported Living rate increase delay (Jan. 6, 2015) (html version)

DDS letter re: Supported Living rate increase delay (Jan 6, 2015) (pdf)

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