



Talking Points on the DOL's Proposed Rule: Application of FLSA to Domestic Service

August 13, 2025

These talking points are offered to help with developing comments in opposition to the Department of Labor's proposed rule to strip minimum wage and overtime protections from home care workers.

Background: On July 2, 2025, the U.S. Department of Labor's Wage and Hour Division issued a notice of proposed rulemaking, [Application of the Fair Labor Standards Act to Domestic Service](#). The proposed rule would rescind the 2013 Home Care Final Rule extending Fair Labor Standards Act (FLSA) protections to domestic workers, including home care workers. Specifically, the 2013 Home Care Final Rule (which the Department of Labor seeks to rescind) did two significant things:

- More narrowly defined “companionship services,” which are exempt under FLSA, as the provision of “fellowship and protection.” Under this definition, companionship can also include “care” (i.e., assistance with activities of daily living and instrumental activities of daily living) but only if care work does not exceed 20 percent of the total hours worked in a week. As a result, individuals and families employing most home care workers must pay workers the federal minimum wage and overtime.
- Asserted that third-party employers, such as home care agencies, could not claim the companionship or live-in exemptions. As a result, these employers are required to pay workers the federal minimum wage and overtime.

Comments Due: September 2 via the [Federal Register](#).

Talking Points:

The 2013 Home Care Final Rule corrected a historic injustice.

- The Fair Labor Standards Act of 1938 (FLSA) gave workers a right to minimum wage and overtime pay,¹ but intentionally excluded workforces that were majority people of color.² Congress amended FLSA in 1974 to address this injustice by covering domestic workers, including home care workers, who provide extensive and essential direct care to older adults and people with disabilities of all ages. Yet, the Department of Labor's 1975 Rule (and subsequent court decisions), which guided the application of the amendment, misapplied the amendment's narrow companionship exemption by erroneously excluding many home care workers. This error perpetuated a historic injustice by excluding a home care workforce that is 85 percent women, 64 percent people of color, and 28 percent immigrants.³

- The Department of Labor remedied this error in its 2013 Home Care Final Rule—correctly recognizing the 1974 FLSA amendment’s narrow companionship applied only to casual, non-professional providers of fellowship and protection. The 2013 Home Care Final Rule ensured that most home care workers now qualified for FLSA protections—an acknowledgement that they deserve these basic, fundamental labor rights.⁴
- This new proposed rule would turn back the clock on nearly a decade of progress, while harming home care workers and the people they support. Home care workers deserve basic labor protections—whereas this rule would perpetuate historically rooted racist, sexist, and xenophobic views about whose labor should be valued and protected. The Department of Labor must withdraw this proposed rule and uphold the 2013 Home Care Final Rule, which finally recognized that these basic protections should apply to home care workers.

FLSA protections benefit home care workers and people receiving care without harming the industry.

- Neither the 2013 Home Care Final Rule nor state efforts to apply minimum wage and overtime protections to home care workers have interfered with the growth of the home care industry or led to increased institutionalization. Throughout this industry growth, the home care industry has successfully upheld the minimum wage and overtime rules for home care workers established in 2013. More action is needed to ensure that all home care providers can cover the full costs of home care labor—for example, through Medicaid rate analyses and adjustments—but rolling back FLSA coverage is not the answer.⁵
- FLSA protections have improved the quality of home care jobs as well as the quality and continuity of care provided to people aging and living with disabilities in their homes.⁶ On their own, minimum wage and overtime protections will not solve the home care workforce crisis; but likewise, the workforce crisis will not be resolved without these foundational protections in place. Better wages increase retention and help create a stable, experienced workforce and more continuous, quality care.
- Enforcement data show the positive effects of FLSA protections for home care workers. Since the 2013 Home Care Final Rule, home care agencies have paid \$157.8 million in back wages—compared to \$25.6 million in the ten years prior.⁷ These figures suggest many home care workers have directly benefited from enforcement of the FLSA protections, particularly by receiving overtime pay they wouldn’t have otherwise. Many more likely benefited by working for employers who complied with the rule by paying overtime as required.

The proposed rule will worsen the workforce crisis.

- Excluding workers from basic employment protections is unjust and unwise.⁸ We have a critical shortage of home care workers across this country, severely curtailing access to much-needed care.⁹
- Stripping FLSA protections from home care workers will undermine their professional recognition, erode job quality, deepen turnover (already estimated at 80 percent), and make it even harder to recruit new workers to this essential workforce.¹⁰
- The Department of Labor asserts that the 2013 Home Care Final Rule has failed because the supply of home care workers has decreased relative to demand.¹¹ This argument is incorrect and misleading. In the past decade, the home care workforce has actually added more than 1.5 million new jobs, growing from 1.4 million workers in 2014 to 2.9 million in 2023—

clearly showing that the workforce is expanding.¹² This occupational growth—which outstrips job growth in every other single occupation in the United States—is projected to continue as our population ages and maintains a preference for aging and receiving services in place.¹³

The Department of Labor must focus on strengthening the direct care workforce, not weakening it.

- PHI promotes five pillars of direct care job quality: quality training, fair compensation, supervision and support, respect and recognition, and real opportunity.¹⁴ Instead of stripping minimum wage and overtime protections, policymakers should be working toward bolstering these five job quality pillars.¹⁵ FLSA protections are a foundational requirement for achieving job quality goals and improving access to care.
- We urge the Department of Labor’s Wage and Hour Division to withdraw the proposed rule to strip FLSA protections from our country’s largest occupation—home care workers. Home care workers should never have been excluded from FLSA coverage and the 2013 Home Care Final Rule was right to read the 1974 FLSA amendment as applying these protections to most home care workers. The home care industry’s challenges with recruitment and retention are driven by the rising need for services, the poor quality of home care jobs, and the lack of adequate Medicaid reimbursements to allow employers to meet minimum wage and overtime requirements—not the FLSA requirements themselves.
- The system needs greater investment in improving the quality of home care jobs, not reduced labor protections for workers. Particularly at a time when the home care industry and its workers and consumers are facing serious threats from Medicaid cuts and immigration restrictions and deportations, removing basic labor protections from home care workers will only exacerbate the crisis.

Additional Resources:

- **PHI**
 - [Trump Administration’s Proposed Labor Rules Will Strip Wage and Overtime Protections from Millions of Home Care Workers](#)
 - [PHI Statement on Department of Labor’s Halt of Home Care Worker Protections](#)
 - [Workforce Data Center](#)
 - [Direct Care Workers in the United States: Key Facts 2024](#)
 - [Amicus Brief in Defense of the 2013 Rule](#)
- **2019 ASPE Report** [Analysis of State Efforts to Comply with Fair Labor Standards Act Protections to Home Care Workers](#)
- **2020 GAO Report** [Observations on the Effects of the Home Care Rule](#)

¹ 29 U.S.C. § 203.

² Perea, Juan F. 2011. “The Echoes of Slavery: Recognizing the Racist Origins of the Agricultural and Domestic Worker Exclusion from the National Labor Relations Act.” *Ohio State Law Journal*, 72(1): 95- 138.

³ PHI. 2024. Workforce Data Center. <https://www.phinational.org/policy-research/workforce-data-center/>

⁴ Home care workers perform increasingly skilled, complex, and medically related tasks far beyond “companionship.” For home care workers in the most recent years data are available: median hourly wages were \$16.13 in 2023; median

annual earnings were \$21,889 in 2022; 40 percent lived in or near poverty in 2022; and 46 percent worked part time in 2022. PHI. 2024. Direct Care Workers in the United States: Key Facts 2024. New York, NY: PHI. <https://www.phinational.org/resource/direct-care-workers-in-the-united-states-key-facts-2024/>.

⁵ PHI. “FLSA Facts.” April 17, 2015. Accessed August 8, 2025. <https://www.phinational.org/wp-content/uploads/legacy/flsafacts2-04202015.pdf>.

⁶ Brief for Martin J. Walsh as Amicus Curiae, *Martin J. Walsh v. WiCare Home Agency, LLC, et al.* No. 24-2565. 3rd Ct. 2025. <https://www.nelp.org/app/uploads/2025/01/2025-NELP-Amicus-Brief-Homecare-Workers-Min-Wage-Overtime-Protections.pdf>.

⁷ U.S. Department of Labor. 2025. *Wage and Hour Compliance Action Data*. https://enforcedata.dol.gov/views/data_summary.php; analysis by PHI (July 2025).

⁸ Economic Policy Institute. 2023. Rooted in racism and economic exploitation. <https://www.epi.org/publication/rooted-in-racism/>.

⁹ While there are currently around 2.9 million home care workers, the number of home care jobs is expected to grow 26 percent between 2022 and 2032, adding nearly 740,000 jobs. However, since retention of home care workers is so low, it is expected we will need to fill 5.5 million home care jobs between 2022 and 2032. PHI. 2024. Workforce Data Center. <https://www.phinational.org/policy-research/workforce-data-center/#tab=National+Data&natvar=Employment+Projections>.

¹⁰ Joyce Famakinwa, *Home Care's Industry-Wide Turnover Rate Reaches Nearly 80%*, Home Healthcare News (July 3, 2024), <https://homehealthcarenews.com/2024/07/home-cares-industry-wide-turnover-rate-reaches-nearly-80/>.

¹¹ Amanda R. Kreider & Rachel M. Warner, *The Home Care Workforce Has Not Kept Pace With Growth In Home and Community-Based Services*, Health Affairs, vol. 42, no. 5, p. 650 (May 2023), <https://www.healthaffairs.org/doi/epdf/10.1377/hlthaff.2022.01351>.

¹² PHI. 2024. Workforce Data Center. <https://www.phinational.org/policy-research/workforce-data-center/#tab=National+Data>.

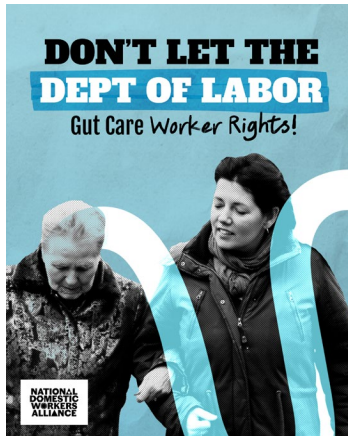
¹³ Binette, Joanne. 2021. Where We Live, Where We Age: Trends in Home and Community Preferences. Washington, D.C.: AARP Research. <https://www.aarp.org/research/topics/community/info-2021/2021-home-community-preferences.html>.

¹⁴ PHI. 2021. Five Pillars of Direct Care Job Quality. <https://www.phinational.org/resource/the-5-pillars-of-direct-care-job-quality/>.

¹⁵ PHI. 2025. “PHI Launches Universal Direct Care Workforce Initiative to Transform Training and Career Pathways for Nation’s Five Million Direct Care Workers.” *PHI Newsroom*, July 10, 2025. <https://www.phinational.org/news/phi-launches-universal-direct-care-workforce-initiative-to-transform-training-and-career-pathways-for-nations-five-million-direct-care-workers/>.

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NDWA – Proposed DOL Rule Change Toolkit



The U.S Department of Labor is proposing a change to the “companionship rule”, which would lead to the denial of the right to federal minimum wage and overtime for home care workers. Home care agencies would no longer have the legal duty to pay minimum wage or overtime for home care workers they employ. This would be true no matter if the agency has clients who privately pay for services or are Medicaid beneficiaries. This rule change would be a devastating setback for the direct care workforce and for all domestic workers.

The Department of Labor is attempting to say that domestic and care work are not “real work” and are not a skilled profession that deserves labor rights and protections. We know that this is not true! We also know that this is just the latest in a series of attacks against domestic workers and all working people under the current administration. They are cutting Medicaid funding in the federal budget to starve the public care system, and they are deregulating labor protections for workers. The beneficiaries of these policies are the ultra rich, at the expense of everyone else.

Use this toolkit to help you learn how we can fight back.

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