



March 17, 2005

FLSA2005-12

Dear *Name**,

This is in response to your letter inquiring as to the status of the Wage and Hour Division's policy regarding the companionship services exemption contained in section 13(a)(15) of the Fair Labor Standards Act (FLSA) and interpreted in 29 CFR 552.109(a). The Division has not changed this regulation or its interpretation thereof as a result of the circuit court's opinion in *Coke v Long Island Care at Home*, 376 F.3d 118 (2nd Cir. 2004). Therefore, it is still our opinion that employees engaged in companionship services, as defined in 29 CFR 552.6, who are employed by a third party are exempt from the minimum wage and overtime requirements of the FLSA, and you may continue to rely on the August 16, 2002 Opinion Letter signed by former Administrator Tammy McCutchen (copy enclosed) for practices outside states within the jurisdiction of the Second Circuit. Of course, we will monitor any case law that addresses this issue in other courts, and may reconsider our interpretation if case law so requires.

We trust that the above is responsive to your inquiry.

Sincerely,

Alfred B. Robinson, Jr.
Deputy Administrator

Enclosure

Note: * The actual name(s) was removed to preserve privacy.