

PROVIDING LABOR PROTECTIONS FOR HOME CARE WORKERS

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Evelyn Coke was a Jamaican-born, single mother of five who worked for decades providing care for sick and frail people in their homes. She came to the United States in her thirties and ultimately brought her children to live with her in New York City. Her work consumed very long hours, sometimes up to 70 hours a week with occasional consecutive 24-hour shifts. But no matter how much time Evelyn put in, she earned only about \$7 an hour and received no extra pay – because home care workers were not guaranteed overtime wages in the United States.

In 2001, at age 66, Ms. Coke was hit by a car and suffered injuries that left her unable to do her job. She consulted a lawyer, who invited her to bring a test legal case after examining her pay stubs and realizing that Evelyn had never received overtime for her long hours. Ms. Coke had no health insurance during her working years, and it was not until she was eligible for Medicare that she learned her kidneys were failing. Her health deteriorated rapidly and she was too poor to afford the home care she needed to prevent bed sores that ultimately contributed to her deteriorating condition – a sadly ironic situation given her own life’s work helping others with bed sores. At age 74, Evelyn Coke died of heart failure – in 2009, just two years before Hilda Solis, the Secretary of Labor in the first Obama administration, proposed new rules that could, if carried through, right the wrong that had left her without work protections.

How Home Care Workers were Left Out of New Deal Labor Protections

The 1938 Fair Labor Standards Act provided wage and overtime protections to many American workers, although the jobs women traditionally filled were excluded. A quarter of a century later, in 1974, Congress expanded protections to include domestic workers such as cooks and maids, but still exempted individuals who provided “companionship services.” Charged with writing regulations to implement the new rules, the Department of Labor interpreted the companionship exemption quite broadly. Legislators had wanted to exempt the babysitter or neighbor who provided occasional support, but the Department chose to also exempt professional home care aides employed by third-party agencies. This has become a huge loophole, because services provided by home care aides are essential to growing numbers of Americans, and the need grows as the U.S. population ages. Those projected to need care services are expected to double from 13 million individuals in 2000 to 27 million by 2050.

In 2007, the Supreme Court decided a challenge to the companionship exemption by tossing the decision back to the Department of Labor. In the Court’s view, Congress had given the Department of Labor authority to include home care workers in wage and overtime protections, but the agency had chosen not to do so. A reversal would require another ruling from the Department of Labor. Toward the end of his time in office, the administration of President Bill Clinton proposed rules to eliminate this exemption for home care workers. But when President George W. Bush arrived in 2001, he deemed the proposal too costly and quashed it.

The Obama Administration Moves to Protect Home Care Workers

On December 15, 2011, the Department of Labor announced a new rule eliminating the companionship exemption. During the public comment period for the proposed rule, 26,000 comments arrived – and two thirds of them favored the change to cover home care workers. Opposition to the new rule comes from the home care industry, one of the fastest growing sectors in our economy, which claims that higher wages will make services unaffordable. The industry's argument rings hollow, given that the industry is thriving, with revenue growth of 9% per year from 2001 to 2009. The home care industry is making record profits, even as so many of its workers are so poorly paid that they rely at least in part on public assistance benefits.

Will the Obama administration succeed, at last, in extending normal wage and hour protections to home care workers? The 2012 presidential election delayed finalization of the rule, perhaps because President Obama did not want to appear anti-business during his campaign. In January 2013, the Labor Department finally sent the new rule to the White House Office of Management and Budget. This is the last step in the review process before approval. This step has ignited renewed lobbying by opponents of the rule change – including from for-profit home care companies – with claims that such a change would hurt business.

Caring Work and the Legacy of Gender Discrimination

Whether paid or unpaid, caregiving in the home continues to be performed primarily by women in the United States. This remains true even as gender roles have shifted over the past half century. Ninety percent of home care wage-workers are female and the essential work that they do – helping people bathe, dress, use the toilet, and have nourishing meals – may be undervalued economically in part because it was so long seen as a woman's "natural calling." Over the years, a perception that the labor of home care aides was not real wage-work led to depressed rates of pay. Companies that hire and place home care workers are taking advantage of this legacy of discrimination. But the situation does not serve anyone's best interests, for several reasons:

- low compensation leads to high turnover rates which ultimately hurt the quality of care received by elders and people with disabilities who need personal assistance services;
- low wages force many home care workers to apply for public assistance to get by;
- turnover is costly to agencies that constantly need to hire and train new workers – and also leads to higher costs for taxpayer supported programs that fund home care services.

Studies have shown that home care workers tend to find their work very rewarding. Despite her extra hours of work for low pay, Evelyn Coke once explained, "I don't regret taking care of old people." But many home care aides today cannot afford to do the work they love. Fairly compensating them for taking care of our family members, our neighbors, and ultimately those of us who end up needing care is the right thing to do. Removing the outmoded companionship exemption in U.S. labor law is a crucial step toward fully valuing the work of home care aides.

Read more about the job experiences of home care workers in Sandra S. Butler, Sara Wardamasky, and Mark Brennan-Ing, "Older Women Taking Care of Older Women: The Rewards and Challenges of the Home Care Aide Job." *Journal of Women & Aging* 24, no.3 (2012): 1-22, and Sandra Butler, Nan Simpson, Mark Brennan-Ing, and Winston Turner, "Why Do They Leave? Factors Associated with Job Termination among Personal Assistance Workers in Home Care." *Journal of Gerontological Social Work* 53, no. 8 (2010):665-681.