

# FEDERAL JUDGE RULES THAT HOME CARE AGENCY WAS NOT REQUIRED TO PAY AIDES OVERTIME AT ONE AND ONE-HALF TIMES THE REGULAR RATE WHILE THE HOME CARE FINAL RULE WAS VACATED

*Wage & Hour Alert*  
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A federal judge in Ohio has ruled that an Ohio home care agency was not required to pay its home health aides for overtime at one-and-one-half times their regular rate of pay during the period that the Home Care Final Rule was vacated by the U.S. District Court for the District of Columbia in *Home Care Ass'n of America v. Weil*. This recent decision provides further support to home care agencies that did not begin paying overtime to home health aides at one-and-one-half times their regular rate of pay until October 13, 2015, in reliance on the *Weil* decision. This is a helpful decision for the home care industry.

As home care providers know, the Home Care Final Rule was scheduled to take effect January 1, 2015. The Final Rule prohibited home care providers from relying on the companionship exemption, thereby requiring them to pay their home health aides overtime at one and one-half times their regular rate of pay. In orders issued on December 22, 2014, and January 14, 2015, however, Judge Leon of the District Court for the District of Columbia ruled that the U.S. Department of Labor had exceeded its rulemaking authority and vacated the Final Rule.\* The Department of Labor appealed Judge Leon's determinations, and on August 21, 2015, the D.C. Circuit Court of Appeals reversed his vacatur and found that the Final Rule was a valid exercise of the department's rulemaking authority.

Over the last several months, a number of home care providers have received threat letters from plaintiffs' attorneys claiming that home health aides were owed overtime in accordance with the Final Rule beginning on January 1, 2015, notwithstanding Judge Leon's vacatur. A number of lawsuits have also been filed against home care agencies seeking unpaid overtime for aides on the basis of the same theory. On December 21, 2015, however, a federal judge in Ohio issued a decision analyzing whether a home care provider violated the FLSA when it failed to pay overtime to its home health aides in accordance with the Final Rule from January 1, 2015. In *Bangoy, et al. v. Total Homecare Solutions, LLC*, No. 1:15-CV-573 (S.D. Oh. 2015), home health aides claimed that they became entitled to overtime in accordance with

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the Final Rule on January 1, 2015. The employer, however, did not begin paying overtime to its aides in accordance with the Final Rules until “late August” 2015, after the D.C. Circuit Court of Appeals reversed the vacatur of the Final Rule.

The employer moved to dismiss the complaint, arguing that it was not obligated to pay overtime in accordance with the Final Rule because of Judge Leon’s decision vacating the Final Rule. The employer argued that there was no rule in place prior to August 2015 requiring it to pay aides overtime and that such rule did not come into place until the D.C. Circuit Court of Appeals reversed Judge Leon’s decision. The district court agreed with the employer’s argument and granted its motion, holding:

The district court in the *Weil* cases vacated the rule that purportedly required [the employer] to pay plaintiffs overtime wages before it could go into effect. In the court’s view, [the employer] was entitled to rely on that decision in not paying plaintiffs overtime for the interim period now at issue in this case. Any other conclusion would put [the employer], and other similarly situated employers, in an untenable position...when the district court vacated the rule before its effective date, it became a nullity and unenforceable.

Although not technically binding outside of Ohio, the *Total Homecare Solutions* decision is persuasive authority for federal judges in other jurisdictions who may be asked to decide similar claims against home care providers.

If you have any questions about this alert, or if you have received a demand for unpaid overtime related to work performed on or after January 1, 2015, please contact any one of the attorneys on our home care wage and hour team.

\* See *Home Care Ass’n of America v. Weil*, 76 F.Supp.3d 138 (D.D.C. 2014) and *Home Care Ass’n of America v. Weil*, 78 F. Supp.3d 123 (D.D.C. 2015)