Home Care Work: The Companionship That Was Exempted

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Home care work has received increasing media exposure recently as the Department of Labor, in December, 2011, proposed new regulations that will bring wage and overtime protections under the Fair Labor Standards Act (FLSA) to a group of workers who have been exempted to date. The “companionship exemption,” as it has been called, first came to the public’s attention in 2007 when the Supreme Court, in *Long Island Care at Home, LTD. et al. versus Coke*, ruled the exemption as valid. The court justices suggested it was not their role to change the law. They stated that Congress had given the Department of Labor authority to include home care workers in wage and overtime protections, but the agency had chosen to exclude them. Any change to the law had to come from the Labor Department or Congress, according to the ruling of the court. Since the court decision, Evelyn Coke, the plaintiff in this case, has brought a human face and compelling life story to efforts by advocates to end this exemption; sadly, Ms. Coke died in 2009 without seeing the successful outcome of her own personal fight for social justice.

The history of this exemption reflects how society has traditionally viewed the work of home care aides and, thankfully, how those views are evolving. In 1974, Congress expanded the 1938 FLSA to include wage and overtime protections to most domestic workers but decided that individuals who provided companionship services should not be covered. At the time, the Department of Labor, charged with writing regulations to implement the new law, interpreted the companionship exemption quite broadly. The intention of Congress had been to exempt the babysitter or neighbor who provided occasional support, but the Department chose also to include professional home care aides, employed by third party agencies, under the exemption umbrella—individuals such as Evelyn Coke.

Ms. Coke, the symbol of the campaign to change this rule, was a Jamaican-born single mother of...
five who worked two decades providing care for others; she earned very low wages and often worked 24-hr shifts with no overtime pay. Ultimately, in her final months of illness prior to her death in 2009, she was too poor to afford the home care she herself needed (Martin, 2009). In his last days in office, President Bill Clinton proposed rules to eliminate the companionship exemption for home care workers, but incoming President George W. Bush deemed the proposal too costly, so the exemption remained (Martin, 2009). The appointment of Hilda Solis as Secretary to the Department of Labor under President Barack Obama appears to have provided the political shift necessary for the recent policy change. In October 2011, Secretary Solis addressed attendees of a National Summit at the Rosalyn Carter Institute for Caregiving indicating her department’s examination of the companionship exemption:

Our system for caring for our aging population is buckling. Six million seniors need daily assistance to live outside of a nursing home, and that number will double by the year 2030. According to the Bureau of Labor Statistics, we have less than a million home health care aides in our workforce. They make about $21,000 a year, and these caregivers often have no health care themselves. That’s wrong. (Solis, 2011, p. 1)

Referring to both the home health aides mentioned by Solis as well as personal care attendants, President Obama indicated his support for the new rule eliminating the companionship exemption on December 15, 2011, the day it was publically announced: “The nearly 2 million in-home care workers across the country should not have to wait a moment longer for a fair wage. They work hard and play by the rules and they should see that work and responsibility rewarded” (Office of the Press Secretary, 2011, p.1). A window of opportunity, often looked for by advocates of policy change, had arrived with this new administration, and a step was taken toward fairly compensating those, who through their caring labor, make aging in place possible.

Clare Stacey, in her very readable book, The Caring Self: The Work Experiences of Home Care Aides, published before the new rule was announced, provides excellent analysis for why the removal of this exemption may be an important step, but one which may ultimately undervalue the companionship that is, in fact, a key part of what these workers provide. She notes that:

Even though some aides struggle to define their relational commitments as work worthy of compensation, they are unequivocal that intimate ties with clients produce a sense of job satisfaction and dignity. Rather than taking this as further evidence of home care as familial in nature and therefore outside the realm of paid labor, it behooves us to push for a broader understanding of paid care work that unapologetically places companionship at center. (p.167)

She cautions advocates to steer away from the argument frequently used that home care aides are “more than companions” and thus entitled to protections under FLSA:

Instead, legal scholars, politicians, and advocates must push for a reconceptualization of companionship as labor, worthy of fair compensation and protection under labor law. Until the basic premise of the exemption clause of FLSA is challenged, workers will have to continually defend their work as more than companionship, which not only violates their experiences as workers but reinforces the idea that care work—largely the work of women—is not in fact work. (p.168)

In other words, Stacey suggests the argument behind the recent rule change—that home care workers are more than companions—is wrongheaded; rather, companionship needs to be promoted as worthy of protection under labor law.

Stacey, a sociologist using a grounded theory approach, comes to these conclusions after years in the field doing in-depth interviews with 33 home care aides in California and Ohio, carrying out extensive field observation, and conducting numerous interviews with professionals working directly with home care aides (e.g., social workers, nurses, agency managers). Her book provides a balanced and perceptive examination of both the costs and rewards of this caring work. She brings to light the experiences of these frontline workers who are often “rendered invisible by a public that takes only passing interest in their work” (p. 5).

The formation of the “caring self” identity by home care aides is a central thesis of Stacey’s book, a process that involves workers emphasizing their innate caring abilities. Workers interviewed by Stacey saw themselves as particularly gifted in providing care which allows for a sense of confidence about their abilities but also may “obscure what is in fact a lifetime of ‘constrained choices’” (p. 21). As noted by Stacey, the “emotional capital” these workers bring to the job is valuable to the workers and their clients but is not highly valued...
by society. This emotional capital is the companionship so central to the recent policy debate and something, which Stacey argues should receive more recognition.

One particularly interesting chapter of the book provides a history on the challenges and successes of organizing home care aides—a difficult prospect given that there is not a “shop floor” in this work. Perhaps not surprisingly, given the general apathy, even antipathy, toward unions in the United States, many workers interviewed by Stacey held ambivalent views about unions and some were even ignorant of the benefits they had received (such as higher wages) due to previous union organizing. Stacey notes that future efforts at unionization more likely will win support of both the workers themselves and the public if the emphasis is placed on the caregiver–client relationship: that is, having adequate wages leads to improved services to elders.

In contrast to union organizing, there appears to have been little ambivalence by workers toward eliminating the companionship exemption. Home care workers know they are inadequately compensated for their work and believe they are good at their jobs, are committed to their clients, and enjoy the work. Nevertheless, low wages and lack of benefits often drive them to leave the profession they love in favor of better-compensated employment—even if that is in retail or fast foods, work they like less well. Home care agencies report turnover rates of up to 50%/year (Institute for the Future of Aging Services, 2007). This is not surprising given that home care aides are some of the lowest paid workers in the country (Stone & Dawson, 2008). Moreover, most jobs are part-time, without secure hours due to the fee-for-service structure of the job (Scala, 2008). Furthermore, two out of five workers lack health insurance, with many who are insured receiving that coverage through Medicaid and Medicare (Stone & Dawson, 2008).

Despite these poor work conditions, the fight for minimum wage protections has not been without opponents. The long-term care industry has been built around this exception to basic labor protections; adjustments will need to be made and some home care business owners are worried. As stated by Steven Dawson, former President of Paraprofessional Healthcare Institute, an organization committed to improving the lives of people needing home and residential care through improving the lives of those workers who care for them, “When an economic system that has been distorted over a long period of time is suddenly corrected—to conform to nearly every other industry in the country—the adjustments can indeed be painful” (Dawson, 2011, p.1). But 21 states have required minimum wage protections prior to the proposed rule change and 16 mandate paying overtime; they are proof that the system can withstand these new protections and that decent wages can, in fact, increase retention in a workforce known for high turnover.

The campaign to end the companionship exemption has not focused exclusively on the Department of Labor. Since the Coke decision, efforts also have been made in Congress to remove the exemption. In the 111th Congress, the Direct Care Workforce Empowerment Act was introduced in the House by Representative Linda Sanchez (D) of California and in the Senate by Senator Robert Casey (D) of Pennsylvania, both states with wage protections for home care workers. Although the bill was not passed in that session of Congress, similar legislation has been introduced by Sanchez and Casey in the 112th session: The Direct Care Worker Job Quality Improvement Act (HR 2341, S 1273). But opposition to these wage protections remains, as evidenced by Nevada Representative Lee Terry’s (R) bill, To Preserve the Companionship Services Exemption for Minimum Wage and Overtime Pay Under the FLSA (HR 3066), introduced in response to HR 2341 and S 1273. Evidently, many still believe that the work performed by home care aides should be grouped with that of teenage babysitters and that the care of frail elders is not worthy of a fairly compensated workforce.

This is perhaps not surprising given our long history of devaluing the gendered work of caring in our country—whether that care is of children, people with disabilities, or elders. Despite some relaxation of gender role expectations, women continue to be socialized to do the caring work both at home and in the market (Hooyman & Gonyea, 1995). The duties in these two spheres often resemble one another, with those done in the home receiving no compensation and those done in the market being extremely low paid (Boris & Klein, 2007). To date, both the long-term care industry and society have counted on a supply of women being willing to do this important work at wages that do not allow them to support families (Dawson & Surpin, 2001). Stacey’s book provides a superb analysis of the constraints faced by these low-wage predominantly female workers doing a job they value highly, even as society appears not to.
Nonetheless, the bottom line is that, whether valued or not, as a society we are depending on these workers more and more. First, the number of people needing personal services is expected to double in the first half of this century, from 13 million individuals in 2000 to 27 million in 2050 (Kaye, Chapman, Newcomer, & Harrington, 2006). Second, the availability of family members to provide care is decreasing due to smaller family sizes, increased childlessness, children moving greater distances from parents, higher divorce rates, and rising employment rates among women (Johnson & Wiener, 2006). Third, people almost universally prefer to remain at home as long as possible, even as their need for personal assistance increases. These three phenomena will lead to an ever greater reliance on home care aides.

It is heartening to know that the Department of Labor has finally done the right thing by recognizing that the work done by these individuals goes far beyond casual and intermittent babysitting. This is perhaps a first step toward truly valuing the critical caring and companionship they provide—as advocated in The Caring Self—along with their assistance with activities of daily living. These home care aides will touch all our lives as we and our loved ones age and choose to stay in our homes as long as possible. Knowing that those who care for us are fairly compensated may make the need for such care easier to accept and reassure us that workers coming into our homes will be able to remain in their jobs and consistently provide care; it is a win–win situation for care providers and care receivers alike.

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