

[ORAL ARGUMENT HEARD MAY 7, 2015]

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

HOME CARE ASSOCIATION OF
AMERICA, et al.,
Plaintiffs-Appellees,

No. 15-5018

v.

DAVID WEIL, in his official capacity
as Administrator, Wage and Hour Division
of the U.S. Department of Labor, et al.,
Defendants-Appellants

MOTION FOR EXPEDITED ISSUANCE OF THE MANDATE

This appeal was expedited on the government's motion, over plaintiffs' opposition. This Court issued a decision in the government's favor on August 21, 2015. The government respectfully moves for expedited issuance of the mandate for good cause, as shown below. Plaintiffs oppose this motion.

1. This Court's decision upheld a final rule extending Fair Labor Standards Act (FLSA) coverage to about two million home care workers. The final rule was due to take effect on January 1, 2015, but was enjoined by the district court.

2. The mandate should be issued expeditiously so that the final rule can be implemented. There is no reasonable likelihood that this Court's decision will be subject to further review. The unanimous decision does not conflict with any

decision of this Court, another circuit, or the Supreme Court. To the contrary, the district court's reasoning was foreclosed by the Supreme Court's decision in *Long Island Care at Home, Ltd. v. Coke*, 551 U.S. 158 (2007).

The importance of the new regulations was discussed extensively in the preamble to the final rule and in our briefs. Under the new regulations, the businesses that plaintiffs represent cannot continue to deny their workers the basic protections of the FLSA. The final rule was supported by consumer groups, labor representatives, and industry experts because FLSA protection for this workforce will result in better qualified employees, lower turnover, and a higher quality of care. 78 Fed. Reg. 60454, 60459-60 (Oct. 1, 2013).

There is no basis for further delay. Since the final rule was issued, the Department of Labor has worked closely with stakeholders to provide technical assistance and guidance. *See id.* at 60495. The Department previously indicated that, through December 31, 2015, it will exercise prosecutorial discretion in determining whether to bring enforcement actions, with particular consideration given to the extent to which States and other entities have made good faith efforts to bring their home care programs into compliance with the FLSA since promulgation of the final regulations. 79 Fed. Reg. 60974 (Oct. 9, 2014).

Moreover, the Department will not bring enforcement actions against any employer as to violations of FLSA obligations resulting from the amended regulations until 30 days after the mandate issues.¹

CONCLUSION

For the foregoing reasons, the mandate should be issued on an expedited basis.

Respectfully submitted,

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/s Alisa B. Klein

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September 1, 2015

¹ The Department of Labor intends to announce this enforcement policy in a Federal Register notice.

CERTIFICATE OF SERVICE

I hereby certify that, on September 1, 2015, I filed and served the foregoing motion on counsel of record through this Court's CM/ECF system.

/s/ Alisa B. Klein

Alisa B. Klein