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LRB 05-1646/1

Joint Committee for Review of Administrative Rules

Office of Sen. Glenn Grothman
Office of Rep. Mark Gottlieb
Phone 608-266-7513
Phone 608-267-2369

- **DWD 274.035**

Report to the Legislature **Emergency Rule DWD 274.035** **The Joint Committee for Review of Administrative Rules**

Produced pursuant to s. 227.26(2)(g), Stats.

Emergency Rule DWD 274.035, promulgated by the Department of Workforce Development, (DWD), relates to overtime pay for employees performing companionship services.

Description of the Problem

DWD believes employees providing non medical in home services to seniors are eligible to receive overtime pay. However, there was debate whether there is a definitive statute or rule giving the Department this power. Because of differing viewpoints on the issue, the Joint Committee for Review of Administrative Rules (JCRAR) held a public hearing and reviewed the Department's policy regarding overtime pay for companionship services on January 21, 2004 at the request of Representatives Karl Van Roy and Phil Montgomery and Senator Robert Cowles.

Arguments in Favor of Suspension

- *There currently exists a federal exemption under Section 13(d)(15) of the Federal Fair Labor Standards Act of overtime laws for domestic service employees. Wisconsin should be consistent with the federal exemption.*
- *There is no statutory definition or authority to require overtime pay for companionship services.*
- *If overtime pay is required, the companionship services would have to limit the hours their employees worked or increase charges to the elderly person who is contracting for services. As a result, in home companionship care may become unaffordable for some seniors.*
- *By decreasing the hours an employee could work, more employees will be required to help a specific client. Because of the nature of the job, the relationship between the caregiver and the client takes time to develop. Often clients do not desire multiple caregivers and confusion can be caused to the client especially in cases of Alzheimer's and dementia.*
- *Companionship services are a unique work situation, where an individual will sleep, eat and watch television at their job. Because of the unique nature of this job, overtime requirements should not apply.*

Arguments Against Suspension

- *Suspension of the rule will add confusion to the statute and make it difficult for the agency to apply.*

- *The federal overtime rules are flawed and should not be adopted in Wisconsin. They are broadly defined and could be subject to misapplication or misuse.*
- *Providing overtime pay for companionship caregivers should aid in the recruiting and retaining of workers for these jobs.*
- *In home caregivers should be receive the same labor standards and legal protections as other professions.*

Action by Joint Committee for Review of Administrative Rules

JCRAR found that the agency policy did meet the definition of a rule. Therefore, on January 21, 2004 the committee met in executive session and pursuant to § 227.26(2)(b), Stats., directed the Department of Workforce Development to promulgate an emergency rule regarding their overtime policy for non medical home care companion employees of an agency as part of DWD 274. On April 28, 2004 the Joint Committee for Review of Administrative Rules held a public hearing and an executive session on Emergency Rule DWD 274.035. The committee passed a motion on a 6 to 4 margin, pursuant to s. 227.26(2)(d), Stats., and for the reasons set forth in s. 227.19(4)(d) 1-3., Stats., to suspend Emergency Rule DWD 274.035. On May 27, 2004, JCRAR voted 6-4 to introduce LRB 4533 and LRB 4534, which would grant an overtime pay exemption for providers of companionship services.