

NATIONAL DOMESTIC WORKERS ALLIANCE

September 2, 2025

Submitted via: <https://www.regulations.gov/docket/WHD-2025-0001>

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Washington, D.C. 20210

Comments on Application of the Fair Labor Standards Act to Domestic Service

Dear Mr. Navarrete:

The National Domestic Workers Alliance (“NDWA”) submits these comments in opposition to the Department of Labor’s (“Department” or “DOL”) 2025 proposed rule: *Application of the Fair Labor Standards Act to Domestic Service*. NDWA urges the DOL to retain the current 2013 Final Home Care Rule that guarantees minimum wage and overtime rights for home care workers.

The National Domestic Workers Alliance is the nation’s leading voice for the estimated 2.2 million domestic workers who work as nannies, home care workers, and house cleaners in private homes. The vast majority of domestic workers are women and a significant portion are women of color and immigrants. Every day, domestic workers provide essential care and supportive services to children, older adults, and people with disabilities, as well as keep homes clean and safe. NDWA reaches and engages over 400,000 domestic workers on a regular basis through our affiliate organizations and local chapters based in 53 cities and 22 states across the country and through our digital platforms. NDWA works to raise wages and strengthen industry standards to ensure that domestic and care workers achieve economic security and protection, respect, and dignity in the workplace.

In 2013, NDWA supported the Department of Labor (DOL) Final Rule narrowing the “companionship exemption” under the Fair Labor Standards Act (FLSA). 29 C.F.R. § 552.3. The 2013 Final Rule guaranteed long overdue minimum wage and overtime protections to home care workers. Our public comment argues for the need to retain the 2013 Final Home Care rule and includes testimonies from directly impacted home care workers and consumers of the critical importance in maintaining these basic labor protections for domestic workers.

I. The goal and purpose of The Fair Labor Standards Act (FLSA)

A. Home care workers are clearly and unmistakably covered under the Fair Labor Standards Act

Home care is an essential, skilled, and dedicated career for the nation's domestic workers. In order to achieve its express purpose, the Fair Labor Standards Act must be applied broadly and afford full minimum wage and overtime protections to all domestic workers, including the home care workforce. The "companionship exemption" must be interpreted narrowly to align with the statute's remedial goals "to correct labor conditions detrimental to the maintenance of the minimum standard of living necessary for health, efficiency, and general well-being of workers." *Dunlop v. Carriage Carpet Co.*, 548 F.2d 139, 143 (6th Cir. 1977); 29 U.S.C. § 202(a). "To read the FLSA blindly, without appreciation for the social goals Congress sought, would do violence to the FLSA's spirit." *Nicholson v. World Bus. Network*, 105 F.3d 1361, 1364 (11th Cir. 1997).

Home care workers persistently earn low wages. They are paid one-third less than the average US worker,¹ and these workers are three times more likely to live in poverty than other workers.² In addition to low pay, domestic workers, who are primarily women of color, experience structural barriers in achieving economic security, facing heightened risks of discrimination and threats to their health and safety.³ Moreover, because domestic workers often work in isolation in private households, it is challenging to organize for fair pay and working conditions, forcing home care workers to accept take-it-or-leave-it job conditions. The legacy of legal exclusions based on race and sex of the 1930s New Deal era legislation continue to shape the lives and working conditions of today's domestic workers.⁴

In 1974, Congress amended the Fair Labor Standards Act to "include within the coverage of the Act all employees whose vocation is domestic service." Senate Report No. 93-690, p. 20; House Report No. 93-913, pp. 36. The FLSA as legislation is designed to protect "poorer and powerless workers," and in order to achieve the social goals of Congress, the Act must be interpreted "liberally and afford its protections exceptionally broad coverage." *Nicholson*, 105 F.3d at 1373; *Cheeks v. Freeport Pancake House, Inc.*, 796 F.3d 199, 206 (2d Cir. 2015). It

¹ Banerjee, A., deCourcy, K., Moore, K. K., & Wolfe, J. (2022). *Domestic Workers Chartbook 2022*. Economic Policy Institute. epi.org/256483

² *Direct Care Workers in the United States: Key Facts 2024*. (2024). PHI. <https://www.phinational.org/resource/direct-care-workers-in-the-united-states-key-facts-2024/>

³ Perea, Juan F., *The Echoes of Slavery: Recognizing the Racist Origins of the Agricultural and Domestic Worker Exclusion from the National Labor Relations Act*, 72 OHIO ST. L.J. 195, 96 (2011). National Labor Relations Act, 29 U.S.C. §§ 151-169; Social Security Act, 42 U.S.C. §§ 1381-1385; Occupational Safety and Health Act, 29 U.S.C. §§ 651-678. While Title VII of the 1964 Civil Rights Act, 42 U.S.C. § 2000e, et seq. ("Title VII"), does not expressly exclude domestic workers from its anti-discrimination protections, the statute's application only to employers with 15 or more employees effectively does so in many cases.

⁴Id.

would contradict the deliberate act of acknowledging domestic work as a career and vocation that deserves the protections of the Fair Labor Standards Act, to then permit an exemption to wholly negate the protections for the largest segment of the domestic work industry – the 2.9 million home care workers⁵ across the country. Congress made it clear that with the companionship exemption, it did not intend to exclude trained personnel, whether registered or practical, or regular bread-winners or workers responsible for their families' support.⁶ See also, *Home Care Ass'n of Am. v. Weil*, 799 F.3d 1084, 1093-94 (DC 2015) citing 78 Fed. Reg. 60,454, 60,481.

Home care workers like Sindy, Katrina, Angela, Anai, Tessa, and Isatta are trained professionals and the primary breadwinners for their families who rely on their support to meet basic needs. Below are just a few examples of NDWA members who show up every day to care for others while working tirelessly to keep their own households afloat.

This is my main job and where I hope to retire from. I am a full-time worker working 35 hours per week. I work from 9 am to 4 pm. I am the head of my household, and my income helps to support my kids and my grandmother. I use my income to pay for rent, electricity, gas, food, and personal expenses. - **Sindy Sanchez**, *Medicaid-funded consumer-directed program home care worker for 6 years, certified nursing assistant (CNA), home health aide, care worker for people with Alzheimer's mental disorders, New Jersey*

I am a single mother of two (one college and one 4th grader), I am a student studying nursing as well as a fulltime home care worker. This job pays my bills, college tuition for my son, provides food for my family, as well as other essentials (toiletries, cleaning supplies, gas, children's extra curricular activities, medical bills, therapy) with whatever is left after paying my monthly bills. - **Katrina Mouzon**, *Home care worker for more than 16 years, CNA, Medical Assistant, and certified in Basic Life Support (BLS), Alzheimer's, care, and Equipment Utilization, North and South Carolina*

I use my income as a home care worker to pay my rent, to buy food, and to pay my car insurance. I am the only income earner in my household and have a daughter who I support. - **Angela Thomas**, *Agency-employed home care worker, New Jersey*

My income from paid care work impacts my family 100%; I am 100% a single mother. I have three children, and I have to pay for everything. Without my salary, I do not know what I would have done. With my salary, I have to pay for rent, food, and clothes for my children. I have to cover everything a household needs to survive. - **Anai Rodriguez**, *Privately-employed care worker for 15 years, Trained HHA and Alzheimer care, New York*

It has been my main source of income but it wasn't sufficient enough to sustain my family- it required me to work 7 days a week to make ends meet. -

⁵ Id.

⁶ Senate Report No. 93-690, p. 20; House Report No. 93-913, pp. 36.

Tessa Joseph, Agency-employed home care worker for 15 years, Trained in wound care and non-verbal communications, Pennsylvania

The income I receive as a home care worker is very important to me. I don't have much family in this country, so I am responsible for all my bills and expenses. My daughters and grandkids depend on me. Without my income and support, me and my family would suffer tremendously. I have to cover the cost of public transportation, my medications, health insurance and even with government assistance, I still have to manage my money very carefully to make sure I am able to afford the basic necessities. - **Isatta Nicholas**, Home care worker employed by an agency for 6 years, certified as a CNA and medical technician, Maryland

Our members are trained and certified in various medically related services: many are certified nursing assistants or medical technicians and are trained in basic life support (BLS), Alzheimer's and dementia care, equipment utilization, wound care and non-verbal communications among others. In fact, the federal government and many states have acknowledged the demands and complexity of home care by instituting training and certification requirements for these workers, as they have done for other health care professionals. In short, home care is complex and skilled labor. Home care is not casual or ad hoc work.⁷

The Fair Labor Standards Act was designed "to extend the frontiers of social progress" by "insuring to all our able-bodied working men and women *a fair day's pay for a fair day's work.*" *Message of the President to Congress*, May 24, 1934. *A. H. Phillips, Inc. v. Walling*, 324 U.S. 490, 493 (1945) (emphasis added). Home care workers, particularly during the COVID-19 health crisis, risked their lives every single day – their own safety and health, and that of their families – to provide critical services and care. To allow home care workers to earn subminimum wages in 2025, below \$7.25 per hour, is not only unconscionable but antithetical to the Fair Labor Standards Act. "[T]o extend an exemption other than those plainly and unmistakably within its terms and spirit is to abuse the interpretative process and to frustrate the announced will of the people." *Id.*

Workers can barely survive on existing wages, and would face enormous challenges if wages were reduced any further. In its' Notice of Proposed Rule Making (NPRM), the DOL states, "[t]he proposed rule would likely result in a transfer of income from domestic workers to employers, state Medicaid programs, and private consumers." To further reduce income for home care workers, when they are barely able to survive on current earnings – will be catastrophic for the workforce and industry.

Home care workers like Tara, Isatta, and Clary are already struggling to get by, and rolling back basic protections would push them and their families past the brink.

⁷ PHI. 2016. Home Health Aide Training Requirements by State. New York, NY: PHI. <https://www.phinational.org/advocacy/home-health-aide-training-requirements-state-2016>

If my wages were cut – I would be homeless again for the third time. I would not be able to survive. I would have to go to a shelter which is already full. I would have to decide between eating or putting gas in my car. I would probably have to move out of North Carolina and go back to Ohio. Our wages do not cover all the other costs associated with this field. Like the certifications that not all agencies pay for, mileage if you have to transport and our uniforms which also cost. – **Tara Moore**, *Medicaid-funded consumer-directed program care worker for 30 years, North Carolina*

I pay rent and my bills with my salary, including electricity and gas. I am the sole provider for my three children. What I earn is barely enough; imagine if my salary were cut. We wouldn't make it! – **Clary Jimenez**, *Agency-employed home care worker for 9 years, New Jersey*

Low wages in this industry have a significant impact on me. I'm 67 years old and face several medical challenges, including diabetes, vision issues, and chronic pain in my back and feet. Because of these health conditions, I can't work as many hours as I want. I would like to retire, but with the wages I currently earn, I can't afford to do that. If my wages were to decrease any further, retirement would be completely impossible. I rely on government assistance programs to cover basic needs like housing and food. I also rely on public transportation because I can't afford a car or insurance on my current income. If my wage were to be any lower, I would not be able to afford even my most basic needs. – **Isatta Nicholas**, *Agency-employed home care worker for 6 years, CNA certified, Maryland*

B. Care work is valuable, demanding work that must be afforded protections under the Fair Labor Standards Act

In 2013, the Department of Labor correctly narrowed the companionship exemption to advance and not diminish the spirit of its parent legislation. *See also Gregory v. First Title of Am., Inc.*, 555 F.3d 1300, 1307 (11th Cir. 2009). They reasoned that a broad application of the exemption “harms direct care workers, who depend on wages for their livelihood and that of their families, as well as the individuals receiving services and their families, who depend on a professional, trained workforce to provide high-quality services and continuity of care.” 78 FR 60454, 60455. By limiting the definition of companionship to only fellowship and protection and removing “care,” they rightfully afforded full protection and recognition of care work as labor under the FLSA.

Care work is the critical assistance with activities of daily living (such as mobility, personal hygiene, eating) or instrumental activities of daily living (such as cooking, grocery shopping, managing finances) delivered by home care workers to recipients, including over 7.8 million Medicaid beneficiaries who receive Home and Community Based Services

(HCBS).⁸ See 42 CFR § 441.302(k)(1)(ii). The companionship services exemption should not apply to home care workers, as their duties extend beyond mere companionship. Companionship is primarily emotional support and socialization and is distinct from care work. While care workers may also provide companionship, care work is primarily skilled professional work that is demanding and taxing. The companionship exemption should remain narrowly defined to achieve the purpose of FLSA⁹ and not be applied to the 2.9 million home care workers who are the critical workforce delivering essential services to older adults and individuals with disabilities.

The lived experiences of home care workers across the country make clear that their work extends far beyond mere companionship. From workers like Lisa who manages everything from bathing and feeding to financial transactions and infection control, to those like Isatta, who helps patients with mobility issues, cooks, cleans, and provides hands-on care to people with tracheostomies. Below are just a few examples of how our members are providing skilled labor that is vital to the health and safety of their clients.

I provide comprehensive support for my patient, assisting with all appointments and ensuring transportation whenever necessary. I help with personal care, including grooming, bathing, dressing, and physical therapy exercises, making sure that the patient maintains both comfort and independence. I am also responsible for preparing and managing meals according to the patient's needs and dietary requirements. Whenever the patient must travel out of town, I provide assistance to ensure their safety and continuity of care. In addition, I am responsible for completing the patient's daily checklist, monitoring tasks and routines to ensure nothing is overlooked. Because I spend five days a week directly with the patient, I serve as the primary point of contact for any questions or concerns, providing vital updates and guidance to the patient's family and medical team. My role is central to the patient's well-being, combining professional skill, dedication, and constant attention to detail. - **Carol Bailey**, *Privately-employed care worker for 25 years, Texas*

I do the assessments, I look at their range of motion and their skin. I develop their care plans for them and just write out what they should be doing regularly. I fix meals for them and make sure they receive their medications. - **Timica Dukes**, *Privately-employed care worker, CNA and Associate Nursing degree, North Carolina*

My work can't be identified as companionship. Since my patient can hardly see, I help him with nearly everything. I assist him with getting up, getting into the car, bathing, getting dressed, and other daily tasks. I pick up his medications from the pharmacy, organize them so he can take them easily, do his shopping,

⁸ Murray, C., Stepanczuk, C., Carpenter, A., & Wysocki, A. (n.d.). *Trends in Users and Expenditures for Home and Community-Based Services as a Share of Total Medicaid LTSS Users and Expenditures, 2022*. Mathematica. Retrieved August 26, 2025, from <https://www.medicaid.gov/medicaid/long-term-services-supports/downloads/ltss-rebalancing-brief-2022.pdf>

⁹ *Home Care Ass'n of Am. v. Weil*, 799 F.3d 1084, 1093-94 (DC 2015) citing 78 FR 60454, 60499

prepare his meals, and handle all his errands. - **Ariceli Mancebo**,
Agency-employed home care worker for 8 years, New Jersey

I have bedridden clients that I am responsible for, bathing, cleaning, laundry, prep meals, feeding, telecommunications, doctors' appointments. I assist with paying bills and assisting with financial transactions in the banking establishment. I do medication prep for the week with clients. I transport my clients to run errands, grocery shopping, and pay bills. I am responsible for transferring clients and their equipment. I have veterans and am required to observe them because of medical needs and physical therapy. My cancer patients require positive energy and a clean space so I have to provide my own medical equipment like my masks and gowns to ensure I don't contaminate my client. - **Lisa Lee**, *Agency-employed home care worker for over 20 years, South Carolina*

I am an experienced caregiver who provides hands-on support to patients with a range of needs. My first patient was in a wheelchair, and I supported her by cooking, cleaning, and helping with mobility. I have also cared for patients with tracheostomies, making sure to maintain proper cleanliness to prevent complications. At times, I've had to lift or transfer patients to support their mobility and ensure comfort. I take pride in striving to maintain my patients' dignity while meeting their daily needs. - **Isatta Nicholas**, *Agency-employed home care worker, Maryland*

I help them with daily tasks like laundry, cleaning, and bathing. I also take them to their doctors and dentist, and handle grocery shopping. I cook their meals and pick up their medications from the pharmacy. I remind them when to take their medicine and keep track of the right times, including whether it should be taken with meals. I schedule their medical appointments. They are elderly and alone, so we are the ones who support them in everything. - **Aurelinia Moronto**,
Agency-employed home care worker for 6 years, New Jersey

We support them with the daily medications they must take. We also support patients who are unable to manage their own movements, providing assistance during their therapies as needed. We don't just provide emotional support; we also help them with their therapies, enabling them to return to their previous lives. We support them with cognitive exercises. - **Angela Thomas**,
Agency-employed home care worker, New Jersey

For me, companionship means you come in and sit with the person you're taking care of and you do nothing. But in my case I am not a companion. I am a home care worker and I do a lot of things. I do laundry, I do errands, I do light cleaning, I make the bed, I cook for the person, I go to the doctor appointments every month and if there is an emergency I respond to that emergency. I do listen and talk to them and give them company and I go on a walk with a person. But I am responsible for helping with dressing, showering, cleaning, feeding and administering medications. - **Ludie Delva**, *Privately-employed home care worker for 24 years, New York*

Home care workers take on essential and challenging work every day and are grossly underpaid. The current median salary of home care workers is merely \$21,889,¹⁰ barely above the federal poverty level for a household of two.¹¹ As noted above, care work continues to be devalued – due to persistent stereotypes that caregiving is “women’s work” and not real work that is as productive or demanding as work done by men outside the home¹² compounded with a legacy of legal exclusions based on race and sex.

Below are testimonies from NDWA workers that highlight the daily struggles of already living paycheck to paycheck, burdened by low wages and a lack of adequate support.

Low wages are not enough to cover all my bills, so no treats for me. It affects my meals, everyday life living paycheck to paycheck. If wages decrease I would have to get another job, which would leave my sister without care she desperately needs. - **Kingia Randall**, *Medicaid-funded consumer-directed program care worker for 35 years, Georgia*

Low wages force me to work double shifts, up to 80 hours a week, just to cover rent, food, transportation, and medical bills. I am the sole provider for my husband and my seven children. If my wages decreased, I would not be able to meet even the most basic needs for my family. - **Isatta Nicholas**, *Home care worker for 12 years, Agency-employed worker, Maryland*

My wages have been so low I had to work two to three jobs in order to pay my bills. It was incredibly stressful. I was physically, mentally and emotionally worn out because I had to work so hard. - **Diondre Clarke**, *Home care worker for 10 years, North Carolina*

The proposed rule will have a huge impact on the lower class. It will affect us greatly, especially with prices going up, food, and electricity. There have been many times when I haven't been able to pay my bills, I have maxed out credit cards, and borrowed money. In this country, more than half of your salary goes towards paying rent. I would lose my apartment, and my children would not be able to attend college. I would not stay in the industry because it is very demanding work. - **Anai Rodriguez**, *Home care worker for 15 years, New York*

Denying home care workers the most basic of labor protections through an expansion of the companionship services exemption that ultimately authorizes home agencies to pay subminimum wages - *wages below \$7.25 per hour* - defies the explicit purpose of the Fair Labor Standards Act.

¹⁰ PHI. “Workforce Data Center.” Last modified September 2024.

<https://www.phinational.org/policy-research/workforce-data-center/>

¹¹ Assistant Secretary for Planning and Evaluation, U.S. Department of Health and Human Services. (n.d.). *Poverty Guidelines*. Retrieved August 26, 2025, from <http://aspe.hhs.gov/topics/poverty-economic-mobility/poverty-guidelines>

¹² See, e.g., Palmer, P. (1989). *Domesticity and Dirt: Housewives and Domestic Servants in the United States, 1920-1945*. Temple University Press. <https://doi.org/10.2307/j.ctv941wpk>; Smith Peggie R., *Regulating Paid Household Work: Class, Gender, Race, and Agendas of Reform*, 48 Am. U. L. Rev. 851, 880-918 (1999).

C. Home care is a rapidly growing industry that must be fully regulated under the FLSA

The home care industry, as one of the fastest growing occupations in our economy,¹³ must be regulated fully under the FLSA . It is critical not only that “care work” be eliminated from the definition of companionship services, but the ban against third-party employers utilizing the exemptions remain. Nearly half (46%) of all agency-based home care aides had family incomes below the twice-poverty threshold.¹⁴ It must be made explicit that home care agencies, as third-party employers, cannot use domestic service exemptions in the same manner as private households. Maintaining this standard from the 2013 Rule provides a secondary layer of protection and ensures third-party employers understand their duties and obligations under the FLSA.

Loper Bright Enterprises v. Raimondo does not support the Department’s proposed departure from its 2013 approach. 603 U.S. 369 (2024). The D.C. Circuit upheld the Department of Labor’s 2013 interpretation that third party employers may not claim either exemption as a “reasonable” interpretation of the statute. *Home Care Ass’n of Am. v. Weil*, 799 F.3d 1084, 1093-94 (DC 2015). DOL merely invokes the Supreme Court’s 2024 ruling in *Loper Bright*, as the sole ground for “taking a fresh look” at the 2013 Rule, but the decision does not compel DOL to change its interpretation of the FLSA. Indeed, since the Supreme Court’s decision, DOL has “taken the position in litigation that the 2013 Rule is still valid.” 90 Fed. Reg. 28978. Further, *Loper Bright* does not displace the change-in-position doctrine or otherwise direct agencies sua sponte to rescind their own regulations without complying with standards under the Administrative Procedure Act (APA). See, e.g., *National Cable & Telecomms. Ass’n v. Brand X Internet Servs.*, 545 U.S. 967, 1001 n.4 (2005) (“We must note the conceptual difference between the Chevron inquiry, which asks whether an agency’s substantive interpretation of a statute is a reasonable one, and the procedural question of whether an agency provided an adequate explanation for its decision to switch from one statutory interpretation to another.”).

If DOL seeks to change its policy, it must provide a “reasoned explanation” for now “disregarding [the] facts and circumstances that underlay” its current policy of excluding third party employers from the exemption. *FCC v. Fox Television Stations*, 556 U.S. 502, 516. The DOL’s reliance on a misreading of Supreme Court precedent does not satisfy the rigorous “reasoned explanation” standard applicable to the proposed policy change. See *Dep’t of Homeland Security v. Regents of the Univ. of California*, 140 S. Ct. 1891, 1912-13 (2020). DOL conducted that statutorily prescribed and fact-bound inquiry in 2013, and the 2013 Rule is the “best reading” of the statute. The 2025 proposed rule does not

¹³Fn. 2

¹⁴ Twice the poverty threshold is double the federal income level considered necessary to meet basic needs for a family of a specific size. Banerjee, A., deCourcy, K., Moore, K. K., & Wolfe, J. (2022). *Domestic Workers Chartbook 2022*. Economic Policy Institute. epi.org/256483

demonstrate any serious issue with those facts, and instead the DOL bases its reconsideration of the 2013 Rule in large part on an incorrect reading of *Loper Bright*.

D. Home care workers deserve the respect and dignity on the job which comes from being protected by the Fair Labor Standards Act

The Department of Labor in 2013 was correct when it stated that home care “workers are due the respect and dignity that accompanies the protections of the FLSA.” Domestic workers were originally excluded from the FLSA at its inception because of southern lawmakers’ concerted resistance to extending these workplace protections to formerly enslaved laborers.¹⁵ In 1938 when the FLSA was passed, it wholly excluded domestic work – an occupation held by the majority of Black women at the time.¹⁶ Currently, the home care workforce is over 80% women and over 60% people of color.

Now is not the time to roll back the rights of the home care workforce, especially given that home care is poised to have an outsized role in growing our economy. Instead, we need to strengthen workplace protections. In the last decade, states and localities have passed various Domestic Worker Bills of Rights in an effort to raise standards for the workforce: New York (NY) 2010, 2021,¹⁷ Hawaii (HI) 2013,¹⁸ California (CA) 2013 and 2016,¹⁹ Massachusetts (MA) 2014,²⁰ Connecticut (CT) 2015,²¹ Oregon (OR) 2015,²² Illinois (IL) 2016,²³ Nevada (NV) 2017,²⁴ Seattle, Washington (WA) 2018,²⁵ New Mexico (NM) 2019,²⁶ Philadelphia, Pennsylvania (PA) 2019,²⁷ Virginia (VA) 2020 and 2021,²⁸ New York City, NY 2021,²⁹ District of Columbia (DC) 2022,³⁰ New Jersey (NJ) 2023,³¹ and Rhode Island (2024).³² Furthermore, Congress has introduced a bill to strengthen protections and workplace standards for domestic workers, including in the 119th Congress (2025-2026) as HR 3971.³³

¹⁵ Perea, Juan F., *The Echoes of Slavery: Recognizing the Racist Origins of the Agricultural and Domestic Worker Exclusion from the National Labor Relations Act*, 72 OHIO ST. L.J. 195, 96 (2011).

¹⁶ Terri Nilliasca, Note, Some Women’s Work: Domestic Work, Class, Race, Heteropatriarchy, and the Limits of Legal Reform, 16 Mich. J. Race & L. 377, 394 (Spring 2011)

¹⁷ NY (A01470/2311, 2010), (S05064/A08007, 2021)

¹⁸ HI (SB535 HD2, 2013)

¹⁹ CA (AB 241, 2013 and SB 1021, 2016)

²⁰ MASS (S. 882, 2014)

²¹ CT (SB 446, 2015)

²² OR (SB-552A, 2015)

²³ IL (HB 1288, 2016)

²⁴ NV (SB 232, 2017)

²⁵ Seattle, WA (CB 125627, 2018)

²⁶ NM (SB 85, 2019)

²⁷ Philadelphia, PA (Bill No. 19060701, 2019)

²⁸ VA (SB 804, 2020) and VA (SB 1310, 2021)

²⁹ New York City, NY (Int 0339-2018, 2021)

³⁰ DC (B24-0712, 2022)

³¹ NJ (S723/A822, 2023)

³² RI (H 7532/S 2021, 2024)

³³ H.R.3971 - Domestic Workers Bill of Rights Act, 119th Congress (2025-2026)
<https://www.congress.gov/bill/119th-congress/house-bill/3971>

In 1974, Congress stated, “including domestic workers under the protection of the Act should help to raise the status and dignity of this work.” House Report No. 93-913, 93rd Cong., 2d Sess., pp. 33-34 (1974). Domestic work deserves economic recognition as “the work that makes all other work possible.”³⁴ The Department of Labor should be acting in accordance with Congressional intent and aim to enforce critical protections, rather than eliminate them from the country’s essential workers.

For home care workers like Christianetta and Mable, this proposed rollback of basic protections feels like a direct attack on their dignity, livelihood, and ability to care for those they work for.

I feel disrespected and useless. I think we are taken for granted. I believe in equity, we deserve recognition that our role matters. If our rights are taken away, no one would want to become a home care worker. No one would want to come into this industry when you get overtime and minimum wage at McDonalds. We have someone's whole life in our hands and those people flipping burgers get more respect. This industry will crumble. It would say that care work doesn't matter. They don't care that you are taking time out of your life to care for someone else. They want people to burn out and burn out their pockets. - **Christianetta Jones**, *Agency-employed care worker, South Carolina*

I feel sad, marginalized. I don't think I can keep working in this industry anymore; we deserve respect. Our work has value. - **MaEdith Arellano**, *Agency-employed care worker, New Mexico*

I feel strongly that if home care workers were to lose the right to minimum wage and overtime, it could have devastating consequences. I believe that long-suffering and even death could result and that the healthcare industry as a whole would take a major fall. In such a scenario, the rich would continue to thrive while the poor, including caregivers and patients who rely on them, would suffer the most. This loss would not only devalue care work but also undermine the public’s perception of the profession, showing that the essential labor of caregivers is not respected or protected. - **Mable Murdock**, *Privately-employed care worker for over 45 years, New York and Texas*

If we were to lose our rights to minimum wage and overtime, that would be taking us back to slavery and care workers would not be able to provide for themselves and their families. Care workers would have to find work in other industries to get better wages, or do multiple jobs. Society would look down on care workers and would not see our work as important work. - **Huldah Nesbitt**, *Privately-employed care worker for 25 years, Florida*

³⁴Poo, A. (Director). (2018, November). *The work that makes all other work possible* [Video recording]. https://www.ted.com/talks/ai_jen_poo_the_work_that_makes_all_other_work_possible

II. Addressing the home care workforce shortage and ensuring access to care

A. Understanding the care crisis and its root causes

In recent years, the U.S. has confronted a growing care crisis marked by an increasing demand for caregiving services and a significant shortage of professional care workers. By 2030, the value of long-term care in the economy may reach up to \$2.5 trillion.³⁵ The rapidly aging U.S. population, increased costs for long-term institutional care, and individual preferences for remaining at home have made home care services one of the fastest growing industries in the United States.³⁶

Significant projected demand for home care is largely due to the aging Baby Boomer population, the last of whom will turn 65 by 2029.³⁷ Old age highly correlates with functional limitations and chronic disability. From 2022 to 2060, the population of adults age 65 and older in the U.S. is projected to increase dramatically from 57.8 million to 88.8 million. The number of adults aged 85 and older is expected to nearly triple over the same period from 6.5 million to 17.5 million. This demographic shift is the primary driver of job growth in the direct care workforce.³⁸ It is misleading for the DOL to claim that the supply of home care workers has decreased relative to demand as a result of the 2013 Rule when the home care workforce has actually added more than 1.5 million new jobs, growing from 1.4 million workers in 2014 to 2.9 million in 2023. In addition, the number of Medicaid HCBS participants more than tripled between 1999 and 2020, going from 1.10 million participants in 1999 to 3.37 million participants in 2020. The rapid increase in HCBS participants has stressed the ability of the home care workforce to keep pace with this new demand.³⁹

Replacing the 2013 Rule with a proposed rule would exacerbate the shortage of home care workers and reduce access to quality care. It is well established that the pressing nationwide shortage of home workers has persisted in the last decade since the 2013 Rule went into effect due to two causes:

³⁵ O'Neill Hayes, T., & Kurtovic, S. (2020). *The Ballooning Costs of Long-Term Care*. American Action Forum. <https://www.americanactionforum.org/research/the-ballooning-costs-of-long-term-care/>

³⁶ *Supporting and Sustaining the Home Care Workforce to Meet the Growing Need for Long-Term Care* (No. 202011). (2020). American Public Health Association. <https://www.apha.org/policy-and-advocacy/public-health-policy-briefs/policy-database/2021/01/13/supporting-and-sustaining-the-home-care-workforce>

³⁷ Harootunian, L., Perry, K., Buffett, A., O'Gara, B., & Hoagland, G. W. (2023). *Addressing the Direct Care Workforce Shortage*. Bipartisan Policy Center. <https://bipartisanpolicy.org/report/addressing-the-direct-care-workforce-shortage/>

³⁸ *Direct Care Workers in the United States: Key Facts 2024*. (2024). PHI. <https://www.phinational.org/resource/direct-care-workers-in-the-united-states-key-facts-2024/>

³⁹ Kreider, A. R., & Werner, R. M. (2023). The Home Care Workforce Has Not Kept Pace With Growth In Home And Community-Based Services. *Health Affairs*, 42(5), 650–657. <https://doi.org/10.1377/hlthaff.2022.01351>

- (1) **High turnover:** Compared to industries paying higher wages, such as fast food and retail, low hourly wages for home care workers is the primary cause for high turnover and the inability to retain and recruit workers in this essential field. Home care wages are not competitive and are hamstrung by low Medicaid reimbursement rates for Home and Community Based-Services, which set the industry wage standard as the largest single payor of home care.⁴⁰
- (2) **Growth in demand:** The rapidly expanding older adult population outpaces the growth of the workforce, and this coincides with state efforts to move from Medicaid-funded institutional care to expanded Home and Community based Services (HCBS). HCBS has become a critical component of the Medicaid program because it is consistent with many beneficiaries' preferences for where they would like to receive their care, and is part of broader efforts by the federal and state governments toward community integration of older adults and people with disabilities. See 89 FR 40542, 40546.

Under these conditions, instituting minimum wage and overtime protections alone will not solve the home care workforce crisis. However, the workforce crisis cannot be solved without these foundational protections in place. The only way to solve the crisis is to guarantee higher wages to improve retention and create a stable, experienced workforce equipped to meet the rising long-term care needs.

B. Home care worker shortages: Why low wages jeopardize access to care

Inadequate compensation, including wages, salary, and benefits, is consistently cited as the primary factor causing home care workers to leave the field.⁴¹ As a result of low wages, job turnover is high, recruitment and retention are challenging for both families and service providers, and people often cannot get the care they need.⁴² As the Centers for Medicare &

⁴⁰Who Pays for Long-Term Services and Supports?. (2025, August 26).

<https://www.congress.gov/crs-product/IF10343>

⁴¹ Courtney Roman, Clare Luz, et al., *Direct Care Workforce Policy and Action Guide*, Milbank Memorial Fund, May 2022. Available at:

<https://www.milbank.org/publications/direct-care-workforce-policy-and-action-guide/>. See also Hewko, S. J., Cooper, S. L., Huynh, H., Spiwek, T. L., Carleton, H. L., Reid, S., & Cummings, G. G. (2015). Invisible no more: A scoping review of the health care aide workforce literature. *BMC Nursing*, 14(1), 38. <https://doi.org/10.1186/s12912-015-0090-x>; Weller, C., Almeida, B., Cohen, M. A., & Stone, R. I. (2020). Making Care Work Pay: How Paying at Least a Living Wage to Direct Care Workers Could Benefit Care Recipients, Workers, and Communities. *LeadingAge*, <https://leadingage.org/making-care-work-pay/>; Baughman, R., & Smith, K. (2007). The Labor Market for Direct Care Workers (Working Paper Nos. 07-4). New England Public Policy Center at the Federal Reserve Bank of Boston; Baughman, R. A., & Smith, K. E. (2012). Labor Mobility of the Direct Care Workforce: Implications for the Provisions of Long-Term Care.

⁴² Office of the Assistant Secretary for Planning and Evaluation. (2020). Strengthening the Entry-Level Health Care Workforce: Finding a Path. Washington, DC: Office of the Assistant Secretary for Planning and Evaluation, U.S. Department of Health and Human Services. <https://aspe.hhs.gov/reports/strengthening-entry-level-health-care-work-forcefinding-path>.

Medicaid Services (CMS) notes, one of the significant factors contributing to workforce shortages in HCBS is low wages and poor benefits.⁴³ Specifically:

- **Wages for direct care workers have not kept pace with inflation.** From 2008 to 2019, home care worker wages were stagnant at \$11 to \$12 an hour.⁴⁴ While prices are 24.3% more expensive today than they were pre-pandemic in February 2020,⁴⁵ home care workers' hourly wages have only increased by around 2% since the pandemic.
- **Wages home care workers earn are not livable wages.** Only five states reported a median hourly wage that is at or above the livable wage for one adult according to the 2022 National Core Indicators (NCI) State of the Workforce Survey.⁴⁶
- **Wages are lower than comparable entry level jobs in most states.** This is according to the Assistant Secretary for Planning and Evaluation (ASPE) at the Department of Health and Human Services.⁴⁷

In addition to low wages, these jobs are often of poor quality, with part-time hours and unpredictable scheduling, limited access to training, few benefits, and high rates of injury.⁴⁸ There is significant competition from fast food and retail industries incentivizing home care workers to leave the field. These jobs usually offer better pay and hours, and are generally less physically and emotionally demanding than home care.⁴⁹

⁴³ Centers for Medicare & Medicaid Services. (n.d.). *Workforce Shortages in Home and Community-Based Services*. Retrieved August 26, 2025, from <https://www.medicaid.gov/home-community-based-services/downloads/wrkfrce-shtgs-in-home-cmunty-bsed-srvcs.pdf>

⁴⁴ Miller, K. E. M., Coe, N. B., Kreider, A. R., Hoffman, A., Rhode, K., & Gonalons-Pons, P. (2025). Increasing expenditures on home- and community-based services: Do home care workers benefit? *Health Services Research*, 60(S2), e14399. <https://doi.org/10.1111/1475-6773.14399>

⁴⁵ Foster, S. (2025, August 12). *Latest Inflation Statistics: The Prices Rising And Falling Most*. Bankrate. <https://www.bankrate.com/banking/federal-reserve/latest-inflation-statistics/>

⁴⁶ National Core Indicators Intellectual and Developmental Disabilities. (2023). National Core Indicators Intellectual and Developmental Disabilities State of the Workforce in 2022 Survey Report. https://idd.nationalcoreindicators.org/wp-content/uploads/2024/02/ACCESSIBLE_2022NCI-IDDSateoftheWorkforceReport.pdf.

⁴⁷ Khavjou, O., Suarez, G., Tyler, D., Squillace, M., Dey, J., & Oliveira, I. Wages of Direct Care Workers Lower Than Other Entry-Level Jobs in Most States (Issue Brief). Washington, DC: Office of the Assistant Secretary for Planning and Evaluation, U.S. Department of Health and Human Services. August 2, 2023. <https://aspe.hhs.gov/sites/default/files/documents/7a611d901c615e5611ea095b1dcf8d08/wages-dcw-lower-ib.pdf>

⁴⁸ Kreider, A. R., & Werner, R. M. (2023). The Home Care Workforce Has Not Kept Pace With Growth In Home And Community-Based Services. *Health Affairs*, 42(5), 650–657. <https://doi.org/10.1377/hlthaff.2022.01351>

⁴⁹ Harootunian, L., Perry, K., Buffett, A., O'Gara, B., & Hoagland, G. W. (2023). *Addressing the Direct Care Workforce Shortage*. Bipartisan Policy Center. <https://bipartisanpolicy.org/report/addressing-the-direct-care-workforce-shortage/>

In its Final 2024 Ensuring Access to Medicaid Rule, CMS described the inextricable link between adequate wages of home care workers and “access to and, ultimately, the quality of HCBS received by Medicaid beneficiaries.” 89 FR 40542, 40611. CMS viewed its efforts to enhance salary competitiveness in the labor market as a concrete step in recruitment and retention efforts to stabilize this workforce and ensure access to HCBS for Medicaid beneficiaries. 89 FR 40542, 40611.

Over the decade since DOL issued the Final Rule in 2013, states and providers have taken steps to raise wages and improve working conditions for home care workers in order to improve retention and recruitment – with express acknowledgement that the contributions of these workers are undervalued. Now, the Department of Labor seeks to undercut all these necessary efforts by eliminating minimum wage and overtime protections for the workforce.

Without these basic protections, many home care workers like Amanda and Lily may be forced to leave their jobs for other industries. Replacing the 2013 Rule with the former 1975 regulations will worsen existing shortages, dramatically limit access to home care, and could decimate the home care industry. Below are just a few NDWA workers who share how losing these protections would impact their ability to stay in this field:

The industry is already stretched thin. I don't think we will have people coming to work as a home care professional without protections. We will lose a lot of people to other industries, which offer better pay and stability. We will lose a lot of people to other industries like the plants in the area. - **Lilly Martin**, *Privately-employed home care worker for over 5 years, South Carolina*

I couldn't continue working as a caregiver if we lose our rights; I'd have to go to a factory, change jobs. There's no other way. The industry is going to collapse. I love my job, I love what I do... I'd have to look for another job, but what would my patient do if there were no more caregivers to provide the service? No one can live without the assurance of at least a minimum salary and overtime payment. If they are thinking of lowering my salary, I can't continue working in this industry. - **Ariceli Mancebo**, *Agency-employed home care worker for 8 years, New Jersey*

Wages are already low, and if they were lowered, I wouldn't be able to continue in this industry. I'd have to leave and forget about it. I don't think anyone would be available to do the job. Life is expensive. You work with a lot of dedication, but you need your salary, and it can't go any lower than it is. On the contrary, it should be raised. - **Aurelina Moronto**, *Agency-employed home care worker for 6 years, New Jersey*

The wages are already low and I just started to get paid. I couldn't imagine how this would impact me if the money was even less. I already depend on

my siblings to help out to pay bills to take care of mom, and the little money I get helps, but it's definitely not enough. I couldn't imagine what I could do if the wage is decreased even more. - **Aku Jeffrey**, *Agency-employed care worker for 2 years, Georgia*

CNAs don't get paid enough. It is wear and tear and taxing not only on our bodies but also on our mind, families and vehicles. If the rule changes and my wages decrease, this will impact my entire family, taking food out of my children's mouths, impacting myself and my son's higher education and overall basic life. I am too old to be making \$10 or less. I have also invested my time in this industry to be more. - **Katrina Mouzon**, *Privately-employed care worker for 16 years, North Carolina*

This is my primary source of income. If wages in the industry decreased I would no longer be able to work as a caregiver. The pay is already not enough and should be much more for the amount of work that is required to take care of not just one patient but sometimes multiple. - **Amanda Wilson**, *Privately-employed care worker for 15 years, Virginia and North Carolina*

It would negatively affect the industry. People will leave care work. The work will no longer be valued. Employers will be even more abusive towards domestic workers. - **Stephen McGill**, *Privately-employed care worker for 25 years*

I am approaching seniorhood, with some health concerns. I have no family left who do not need caregivers of their own. Ensuring that caregivers are paid at least minimum wage and other worker protections means that there will be caregivers available if or when I need them. I want to make sure there continues to be care workers available for ordinary people. - **Elizabeth Kulacz**, *New England senior*

The proposed rule would also harm more than 9.8 million older adults and people with disabilities⁵⁰ who depend on home care workers to continue living in their communities.

C. Why greater investment in Medicaid with guaranteed higher wages for home care workers is the only way to improve the care crisis

The federal government funds 68% of all home and community based services.⁵¹ Because Medicaid's HCBS is the largest payor of home care services, state Medicaid reimbursement rates for home care services such as personal care services (assistance with activities of daily living) largely determine the base wages of home care workers. Personal care services, unlike most other healthcare services, are not covered by Medicare and private

⁵⁰ *Direct Care Workers in the United States: Key Facts 2024*. (2024). PHI.

<https://www.phinational.org/resource/direct-care-workers-in-the-united-states-key-facts-2024/>

⁵¹ Altman, D. (Ed.). (2024). *Health Policy 101—Medicaid*. KFF.

<https://files.kff.org/attachment/health-policy-101-medicaid.pdf>

insurance. That means that for personal care, existing state Medicaid rates exclusively determine wages.

Thus, while employers such as home care agencies establish compensation, the Medicaid provider payment rate often limits what they can offer. In order to offer competitive wages, employers need higher Medicaid payment rates. Therefore, to stabilize the workforce, states must not only raise rates but also mandate higher wage floors for home care workers – similar to prevailing wage policies. In order to accomplish that, federal funding must also be increased to support states with these changes.

In the past decade, policymakers and providers have been exploring ways to increase the pipeline of workers and improve job quality and retention to meet the growing demand for HCBS. During the COVID-19 pandemic, Congress passed the American Rescue Plan Act (ARPA), which included enhanced Medicaid funding to states for their home care programs to either enhance, expand, or strengthen the services. Pub. L. No. 117-2, § 9817(b)(2). In its guidance, CMS included increasing pay and benefits as one of the workforce retention initiatives to “strengthen” HCBS.

All 50 states opted to take the additional federal funding for the HCBS program. Forty-six (46) states and DC used the federal funds to improve home care worker compensation through wage passthroughs, hazard pay, bonuses, temporary and permanent increases, training, and benefits.⁵² By the end of 2023, states had spent \$26.3 billion of the planned \$37.1 billion in new funding on workforce recruitment and retention.⁵³ When it issued its “Ensuring Access to Medicaid rule,” CMS relied on the fact that nearly all states used ARPA funds to support direct care workers' wages as demonstrative of how increased compensation for the workforce is relevant across the country. 89 FR 40542, 40616. The consensus nationwide is that the primary way to improve access to HCBS is through workforce retention policies that raise compensation.

Eliminating overtime premiums and authorizing subminimum wages is clearly counterproductive. What states need is greater federal investment in HCBS with strong living wage mandates for home care workers in order to stabilize the workforce. Removing labor protections in conjunction with drastic Medicaid cuts is not the answer to improving access to care. For example, John, a family caregiver, shares how fair wages are needed to retain quality home care workers and meet the growing care needs of his aging parents, in-laws, and spouse.

⁵² Robertson, C., & Santillo, J. (2022). *Strengthening Home Care through the American Rescue Plan*. New America.
<http://newamerica.org/new-practice-lab/reports/the-american-rescue-plan-and-the-need-to-strengthen-the-home-care-workforce/>

⁵³Centers for Medicare & Medicaid Services. (2023, December). *Overview of State Spending under American Rescue Plan Act of 2021 (ARP) Section 9817, as of the Quarter Ending December 31, 2022*.
<https://www.medicaid.gov/medicaid/home-community-based-services/downloads/arp-sec9817-overview-infographic.pdf>

I have seen the good home care given to my parents and in-laws in their declining years. I expect to give care to my spouse with a declining illness, and may need help. I know that agencies who help provide these workers struggle to find and keep good quality workers. Paying these workers decent wages would make a difference. As the Baby-boomer generation ages and we need more care in the USA we should be doing more to provide that care and support those who give it. The proposed rules do the opposite. - **John Czachurski, Alabama**

D. Consumers understand their access to care relies on home care workers earning a family sustaining wage, and support wage and hour protections

Valuing care work also demonstrates that we as a society value the people in need of care, and promotes equity for disabled communities. Consumers, the beneficiaries of home care workers' labor, know that the quality and continuity of care and services is inextricably linked to workers earning good pay and having safe and respectful working conditions. Below are statements from care consumers from our networks who rely on home care services and attest how higher wages and improved working conditions for care workers directly impact the quality of care they receive.

I am a person with disabilities that relies on direct care workers. Increase in wages for home care workers would keep them on the job. Home care for me means showering 3 times a week. It means sheets changed once a week. When I'm losing caregivers to McDonalds because they make \$7 more on the hour, it doesn't make sense to me. I'm disabled and it is hard for me to get into the shower by myself. I have diabetic neuropathy in my hands and feet. Walking is difficult without support from a caregiver. I stand with the caregivers who need a living wage so they get what they have and I get the care I need. - **David Gregg Gordon, Arizona**

I live in California and have depended on caregivers to help me in my home for the last three years. It helped keep me in my home for as long as possible. Their work is essential in our society of increasing percentages of elders. We want them to be paid decently. It's fair and important for equity in our society. - **Joyce Higgins, California**

We have had great difficulties finding and keeping good staff for a family member who needs 24 hour care. It boils down to salaries that are far too low, and the benefits are meager also. Most agencies are greedy and those at the top see much better salaries. - **Karen and Will Lozow Cleary, Indiana**

My parents chose to stay in their home and avail themselves of home care services. It was and is appalling to me that the workers they and I depended on to care for the most precious people in my life were paid insufficiently. We

must value these workers by paying them appropriately. - **June Davenport**, *Massachusetts*

The care workers in my parents' home are doing the hardest work imaginable. They are caring for my parents' bodies and spirits. They are doing it with patience and skill. We cannot afford turnover in the household. We want them to stay committed to their work with our family, and their wages must reflect the value of their work. Worker turnover would be devastating to us. The US government must finally invest in families who are in a care crisis and the workers who take care of all of us! - **Gayle Kirshenbaum**, *New York*

Our adult children with autism receive HCBS which enables them to live in their own homes. The care staff are absolutely vital to their health and safety. They need and deserve a living wage! Better wages would make the recruitment of care workers easier and more certain. We are in our 80s and our ability to die in peace depends absolutely on the quality and availability of care workers. - **Virginia and Joe Leonard**, *Pennsylvania*

It's impossible to find good, attentive people to care for my bedridden adult son when they are only paid \$10 an hour! Imagine bathing and toileting someone in the bed and providing intimate care like that and you can't go home and afford your own rent. It's criminal. - **Galen Warden**, *South Carolina*

My sister passed away from cancer. As she struggled with the illness and treatment, she needed help with activities of daily living and toward the end of her life, she needed help with positioning, medication monitoring, transportation to clinic appointments and so much more. It seemed that agencies were unable to retain employees long term so continuity of care suffered. With the aging of Baby Boomers, the need for care will increase and unless wages improve, continuity of care will increasingly suffer. - **Suzanne Senn-Burke**, *Tennessee*

Due to a surgical complication, I am totally dependent on home care workers to meet my basic needs so I can remain in the comfort of my home. They bathe me, dress me, get me out of bed to the commode or wheelchair, prepare meals for me, and, most humiliating, but essential, wipe my bottom and/or change my diaper. Without home care workers, I would develop further complications, and die. Home care workers are incredible people and extraordinarily hard workers. They care for me and about me, and go on to care for others in a 24 hour period in order to come closer to being able to support and care for themselves and their own. They are embarrassingly underpaid. Until you need their care, they are invisible. Many assume that when or should they need such care, their family will come to their rescue. Very unlikely. You will need to pay home care workers. And home care workers deserve to be paid a living wage, which trickles down to the quality of care they provide to their clients, themselves, and their own people. - **Pamela Jordan**, *Washington*

Excellent home care workers are extremely difficult to find, yet they fulfill an incredibly important and difficult need for our elderly to remain in home for their final years rather than languishing in a nursing home with very little individualized care. I've lived the home care side, after moving my elderly parents in with me when they needed help. My mother had severe & aggressive dementia and thought she was enslaved by strangers... My father was limited to a walker and had very limited mobility, needed more help progressively, and full time assistance around the clock. I did what I could, but also worked offshore on occasion and it all would have been impossible without help. Likewise, the quality of workers in elderly care facilities is very limited due to poor pay and ridiculous workload... Who would choose to do this critical work for our elders when you lower minimum pay even further than it is now? Lowering standards even more than they are would be a FOOL's move. - **Mark Rhodes, California**

III. Rescinding the 2013 Final Home Care Rule is unjustified, it is harmful to the workforce, and offers no meaningful benefits.

A. Rescinding the 2013 Final Home Care Rule will harm the most vulnerable care workers

Since the 2013 Home Care Final Rule, home care agencies have paid \$157.8 million in back wages—compared to \$25.6 million in the ten years prior.⁵⁴ These figures suggest many home care workers have directly benefited from enforcement of the FLSA protections, particularly by receiving overtime pay they wouldn't have otherwise.

Our members in South Carolina, Georgia, and North Carolina who gained rights to minimum wage and overtime under the 2013 Final Rule will now have no wage or hour protections under state or federal law. N.C. Gen. Stat. § 95-25.14 (a)(1)(3), Ga. Code Ann. § 34-4-3 (b)(3), S.C. Code Ann. § 41-1-10 et al.⁵⁵

The following testimonies from home care workers across these states, including Cathie, who relies on overtime to afford Christmas gifts, and Christine, who needs it for transportation, highlight how overtime pay helps support care workers and their families.

I had to take on extra (overtime) hours to get a decent check and still haven't been able to sustain myself. I stopped working for agencies and worked directly with families to get a bit more. I had to leave the industry and go back to school. Overtime was essential to helping get by for a while. - **Sandra Kay Earl, Retired home care worker, Georgia**

⁵⁴ U.S. Department of Labor. 2025. *Wage and Hour Compliance Action Data*. https://enforcedata.dol.gov/views/data_summary.php; analysis by PHI (July 2025).

⁵⁵ South Carolina state law does not have any minimum wage or overtime protections.

It's already challenging... Minimum wage in Georgia is only \$5.25 an hour.⁵⁶ What do they wanna pay us, pennies? They really don't want us to live at this point. We will have to find other income, we could not survive in this industry on those wages. I can't believe the world that we live in today. - **Aku Jeffrey**, *Agency-employed home care worker for 2 years, Georgia*

When I work overtime, that money goes to extra special things. Without it, we could not take vacations or buy Christmas presents, birthday presents, and things like that. - **Cathie Hancock**, *14 years as agency-employed care worker, Georgia*

I have been the breadwinner in my household. I was separated from my husband and I made sure I worked as much overtime as possible to support me and my three children. I took weekends and holidays and anything I had to do to make sure my ends were met. I depended on earning overtime. - **Ethel Thomas**, *Home care worker for 26 years, CNA and Medical Technician certified, South Carolina*

Without overtime, date night is over, no more vacations, no school supplies and clothes – I couldn't afford any of these. They are the reasons I work overtime. I often work overtime to help some family members. I won't be able to do that anymore with the rule change. I will be the one asking for help instead. It's so sad –what is going to happen in this world. - **Deanna Lemon**, *Georgia, Certified Nursing Assistant, 8 years as private-pay home care worker*

If I'm not paid overtime that will lower my worth in this work. We already give so much for this work. Most people will leave the field. I will not work anywhere if I know I won't make overtime pay. Gas prices are so high, I would have to make a decision if it is worth me doing the job. I would have to work multiple jobs to make ends meet. This will take parents away from their children and family because they will have to work many jobs. It's not good for people to constantly work without any down time. The economy is already high and to lower caregivers' wages would only make it 10x worse. - **Christine Robinson**, *North Carolina, Home care worker*

Overtime helps with regular pay. If we didn't have overtime we would not see half of what we get on our checks. It would be devastating to us. I have never had a company even help me pay with mileage or oil changes which is an expense that is not included but I am responsible for doing my job and that is how overtime pay helps." - **Tara Moore**, *HCBS Consumer-directed program care worker for 30 years, North Carolina*

If overtime was taken away it would be drastic for me as a home care worker and I'm sure this is the case for lots of other caregivers. Having the opportunity to receive overtime pay makes things a little better when it comes to the amount of money you bring in as a home care worker. Overtime pay is what helps with gas for transportation, it helps me to meet somewhat of a livable wage and pay my

⁵⁶Georgia's State minimum wage does not apply to domestic workers. Ga. Code Ann. § 34-4-3 (b)(3)

bills on-time and provide for my family. - **Amanda Wilson**, 15 years as home care worker in North Carolina, Certified Nursing Assistant and Medication technician

The wages are low enough as it is. They do not need to get any lower. It would affect my living situation. I would have to choose between my medication so my health would be affected. What would I do? I would have trouble with transportation because I might have to choose between car payments and buses that do not run through the areas my clients are in. The people in power do not come down here to see how we are living and what's going on in our daily lives. They are not asking anyone how it would affect us. They are sitting up in those high offices and not considering the real-life impact when they propose these rules. - **Denise Lugo**, Agency-employed home care worker for over 30 years, North Carolina

B. The Department of Labor fails to cite sufficient evidence to support a proposed rule change

The Department of Labor fails to provide sufficient evidence to justify replacing the 2013 Final Home Care Rule. The Department of Labor relied on qualitative interviews from only 15 stakeholder groups in the 2020 report by the U.S. Government Accountability Office (GAO) to assert that the 2013 Final Rule reduced access to home care⁵⁷. While the DOL reasons that states responded to the 2013 Final Rule by restricting workers' hours, stakeholders also provided additional context that:

- States appropriated additional funds to cover overtime costs associated with the rule (which constituted <5% of overall program budgets);
- States did not make major changes in response to the rule;
- Provider agencies limited overtime prior to the rule rather than in response to it and;
- States' responses to the 2013 Rule "provided consumers with more flexibility and control over managing their own care."⁵⁸

Furthermore, in a supplemental analysis of American Community Survey data included in the GAO report, the Office did not find evidence of consumers transferring from home care to institutional or other alternative settings as a result of the 2013 Final Home Care Rule.

There is no evidence to support the Department of Labor's assertion that agencies faced burdensome reporting requirements. The record-keeping requirements of the FLSA are not any more burdensome than compliance with other regulations, such as tax law, and are critical in public transparency - particularly since so many agencies receive public funds through Medicaid in order to operate.

⁵⁷ See U.S. Gov't. Accountability Off., GAO-21-72, Observations on the Effects of the Home Care Rule 8 (October 2020), <https://www.gao.gov/assets/gao-21-72.pdf>.

⁵⁸ Id. at p. 23.

C. The 2013 Final Rule has engendered reliance interests among the Medicaid HCBS system and home care workforce.

Lastly, the successful decade-long implementation of FLSA protections for home care workers has engendered reliance interests across the HCBS system and the home care workforce. States have aligned Medicaid HCBS policies, rate methodologies, electronic visit verification (EVV) systems, and program integrity rules to the 2013 Rule. Providers have built scheduling and payroll systems, workers have organized their lives and incomes around overtime and minimum wage protections, and consumers have built stable care arrangements premised on continuity of staff. The NPRM does not meaningfully evaluate these reliance interests or the disruption costs of reversal, as required for a lawful policy change. Changing the rules now would create both foreseeable and unforeseeable costs as the HCBS system adjusts to a capricious return to the 1975 Rule's incorrect reading of the FLSA.

Workers like Gabby and Vivan are the backbone of our nation's care economy and rely on the 2013 Rule for wage protections. Stripping away minimum wage and overtime protections from home care workers would only undermine the stability of their livelihoods and threaten the care workforce as a whole.

I became a Certified Nursing Assistant in 2014 after the 2013 Final Home Care Rule - thinking the ability to overtime would make the role more attractive. I still got no breaks, but I at least earned overtime. - **Gabby Smith**,
Washington, private-pay home care worker, Certified Nursing Assistant, Medication Technician with certification in CPR, First Aid, Medication administration, and dementia and Alzheimer's care

I felt valued after the 2013 Final Home Care Rule and it helped pay my bills so I could provide better care. - **Vivan Moss**, *California, consumer-directed Medicaid HCBS program, CPR and First Aid certified*

Conclusion

For these reasons, the National Domestic Workers Alliance and the undersigned affiliates and supporting partners oppose the Department of Labor's proposed rule to replace the 2013 Final Home Care Rule with its flawed 1975 predecessor.

Sincerely,



Haeyoung Yoon
Vice President, Policy and Advocacy
National Domestic Workers Alliance (NDWA)

A.Y.U.D.A.INC
Adhikaar for Human Rights and Social Justice
ALA Garifuna Women
Alliance of Filipinos for Immigrant Rights and Empowerment
Arise Chicago
Border Workers United
Brazilian Women's Group
Brazilian Worker Center Inc
Carroll Gardens Association
Casa Freehold
CASA, Inc.
Casa Latina
Centro Cultural de Mexico
Centro de Desarrollo Dominicano
Centro de trabajadoras la esperanza
Centro de Trabajadores Arriba Las Vegas
Coalition For Dignified Housing
Coalition for Humane Immigrant Rights
Comunidades Sin Fronteras CT
Connecticut Worker Center
Domesticas Unidas
Dominican Development Center
Dreamers Mothers In Action (DMIA)
El Centro de Igualdad y Derechos
Escucha Mi Voz Iowa
Esperanza Peace and Justice Center
Fe y Justicia Worker Center
Filipino Advocates for Justice
Graton Day Labor Center
Hand in Hand: The Domestic Employers Network
Hispanic Resource Center of Larchmont & Mamaroneck, Inc.
La Colmena
Las manos trabajadoras que mueven el mundo.
Latino Unión Of Chicago
Lazos
Matahari Women Workers Center
Miami Workers Center
Mujeres Inspiradas en Sueños Metas y Acciones (MISMA)
Mujeres Unidas y Activas
Naugatuck Valley Project
New Labor
New Mexico Caregivers Coalition

Nosototros Connecticut
Pilipino Workers Center of Southern California
Pomona Economic Opportunity Center
Resistencia en Accion NJ
Robert E. Lee Tenant's Union
Tennessee Immigrant and Refugee Rights Coalition (TIRRC)
Unity Housecleaners
WeCount!
Wind of the Spirit Immigrant Resource Center
Women Working Together Usa
Women's Institute for Leadership Development
Working Washington
WORKPLACE PROJECT INC