§ 552.105 Individuals performing babysitting services in their own homes.

(a) It is clear from the legislative history that the Act’s new coverage of domestic service employees is limited to those persons who perform such services in or about the private household of the employer. Accordingly, if such services are performed away from the employer’s permanent, or temporary household there is no coverage under sections 6(f) and 7(f) of the Act. A typical example would be an individual who cares for the children of others in her own home. This type of operation, however, could, depending on the particular facts, qualify as a preschool or day care center and thus be covered under section 3(s)(1)(B) of the Act in which case the person providing the service would be required to comply with the applicable provisions of the Act.

(b) An individual in a local neighborhood who takes four or five children into his or her home, which is operated as a day care home, and who does not have more than one employee or whose only employees are members of that individual’s immediate family is not covered by the Fair Labor Standards Act.

[citing sources]

§ 552.106 Companionship services for the aged or infirm.

The term “companionship services for the aged or infirm” is defined in §552.6. Persons who provide care and protection for babies and young children, who are not physically or mentally infirm, are considered babysitters, not companions. The companion must perform the services with respect to the elderly person or person with an illness, injury, or disability and not generally to other persons. The “casual” limitation does not apply to companion services.

Effective Date Note: At 78 FR 60557, Oct. 1, 2013, §552.106 was revised, effective Jan. 1, 2015. For the convenience of the user, the revised text is set forth as follows:

§ 552.106 Companionship services.

The term “companionship services” is defined in §552.6. Persons who provide care and protection for babies and young children who do not have illnesses, injuries, or disabilities are considered babysitters, not companions. The companion must perform the services with respect to the elderly person or person with an illness, injury, or disability and not generally to other persons. The “casual” limitation does not apply to companion services.

§ 552.107 Yard maintenance workers.

Persons who mow lawns and perform other yard work in a neighborhood community generally provide their own equipment, set their own work schedule and occasionally hire other individuals. Such persons will be recognized as independent contractors who are not covered by the Act as domestic service employees. On the other hand, gardeners and yardmen employed primarily by one household are not usually independent contractors.

§ 552.108 Child labor provisions.

Congress made no change in section 12 as regards domestic service employees. Accordingly, the child labor provisions of the Act do not apply unless the underaged minor (a) is individually engaged in commerce or in the production of goods for commerce, or (b) is employed by an enterprise meeting the coverage tests of sections 3(r) and 3(s)(1) of the Act, or (c) is employed in or about a home where work in the production of goods for commerce is performed.

§ 552.109 Third party employment.

(a) Employees who are engaged in providing companionship services, as