

# Georgia Minimum Wage Law Applies to Employees Exempt from Fair Labor Standards Act, State High Court Rules

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In-home personal care employees in Georgia were covered by the state's minimum wage law, the Georgia Supreme Court has ruled, notwithstanding the fact that those employees were exempt from the minimum wage requirements of the federal Fair Labor Standards Act. [\*Anderson v. Southern Home Care Services, et al.\*](#), No. S15Q1127 (Nov. 23, 2015).

Under the Georgia Minimum Wage Law, employees are entitled to at least \$5.15 per hour, unless they are subject to the minimum wage provisions of any act of Congress, such as the Fair Labor Standards Act, and would receive a greater minimum wage than the GMWL minimum. Such employees would not be covered and protected by the GMWL.

## Background

Two former employees of in-home personal care companies filed suit in Georgia state court alleging they had not been paid the minimum wage to which they were entitled under the Georgia Minimum Wage Law (OCGA §§ 34-4-1 to 34-4-6). The employees provided in-home personal support services to their employers' medically home-bound clients. The employees often had to drive between different clients' homes during the workday and were not compensated for this time.

## FLSA and GMWL

The case was removed to a federal district court, which certified two questions to the Georgia Supreme Court:

1. Is an employee who falls under an FLSA exemption effectively "covered" by the FLSA for purposes of Georgia Minimum Wage Law (OCGA § 34-4-3(c)) analysis, thereby prohibiting said employee from receiving minimum wage compensation under the GMWL?
2. Is an individual whose employment consists of providing in-home personal support services prohibited from receiving minimum wage compensation under the GMWL pursuant to the "domestic employees" exception articulated in Georgia Minimum Wage Law (OCGA § 34-4-3(b)(3))?

The Court answered both questions in the negative.

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The parties agreed that the employees were exempt from the FLSA's minimum wage requirements under the "companionship exemption." The employers argued, however, that even though the employees were exempt from the minimum wage and overtime requirements under the companionship exemption, they were still "covered" by other FLSA provisions, and, therefore, that the Georgia minimum wage law did not apply to them. The Court rejected that argument. The Court held the GMWL is focused squarely on *employees* who are exempted from the FLSA's minimum wage provisions and who could benefit from a state minimum wage (albeit a lower rate than the federal minimum wage), rather than *employers* who are "covered" by the FLSA. Accordingly, the Georgia Supreme Court ruled that employees who were previously exempt from minimum wage under the FLSA companionship exemption nevertheless were covered by the Georgia minimum wage law.

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It remains to be seen how *Anderson* may affect employees who are exempt under other FLSA exemptions, such as the administrative or executive exemptions. The state Supreme Court expressly rejected the argument that if an employer is "covered" by the FLSA (meaning, subject to the requirements of the FLSA), it is not subject to the GMWL as was thought previously. Rather, the Court looked to whether the individual employee was "covered" by the minimum wage provisions of a federal statute, in particular, the FLSA, in determining whether an employee is entitled to protections under the GMWL.

If Georgia courts interpret this decision literally, then employers in Georgia must begin tracking the hours of work of all of their exempt employees and ensure the total pay divided by total hours worked of each of these employees is at least equal to or greater than the Georgia minimum wage.

Jackson Lewis attorneys are available to answer inquiries regarding this case and other workplace developments.

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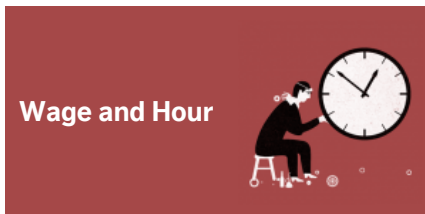
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