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BLOGS

Archives;Class Action & Litigation;Unemployment;Wage & Hour

Family Members Get Unemployment, Too

Agencies employing personal care assistants (PCAs) might want to up their unemployment insurance coverage. For the second time in recent months, the Minnesota Court of Appeals has struck down a law that precludes family members who act as PCAs from obtaining certain benefits. In the case of *Weir v. ACCRA Care, Inc.*, the court determined that a statutory prohibition preventing immediate-family-member PCAs from obtaining unemployment benefits is unconstitutional. The court made a similar ruling in December of 2012 in *Healthstar Home Health, Inc. v. Jesson*. In that case, a statutory amendment imposing a pay cut on relative PCAs but not on nonrelative PCAs was found to violate the Minnesota Constitutions mandate that all similarly situated individuals shall be treated alike.

Minnesota offers PCA services as part of its medical assistance program. Family members (who are not parents, stepparents, or spouses) may become PCAs and receive compensation through the program, but they must be employed by an agency. There are limits on the number of hours per month for which a family member PCA may be compensated, but the law authorizes flexible use of the permissible hours over a six month period. A July 2010 statutory amendment precluded family member PCAs from being eligible for unemployment benefits, presumably as a fraud prevention measure. As the state argued in the *Weir* case, family member PCAs could front load the permissible hours in a six month period and then obtain unemployment benefits for the rest. The court didn't buy the states argument, finding that it did not back up its fraud concerns with evidence or legal authority.

According to the [Family Caregiver Alliance](#), the number of individuals using paid long-term care services will increase to 27 million people nationally by 2050 and, according to the same group, the majority of long term care services are provided by family members. The Minnesota Court of Appeals has made it easier for people who do difficult work for loved ones to receive state benefits comparable to those received by non-family members.

News coverage of the *Weir* case is available [here](#).