



CHILDCARE SOLUTIONS

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Minimum Wage and Overtime Law Regarding Household Employees

U.S. Fair Labor and Standards Act (FLSA)
29 CFR parts 510 - 794

U.S. Department of Labor
Department of Hours and Wages

Overtime laws and regulations may not be waived by agreement between the family and the care-provider.

This is FEDERAL law, as prescribed in the FLSA, CFR 29.

State laws, which vary widely, may go beyond the federal law, but may not under any circumstance nullify federal law.

Be sure to check with your state's department of labor (hours & wage division) to determine your local minimum wage rate and applicable overtime regulations.



U.S. DEPARTMENT OF LABOR

Fair Labor Standards Act of 1938 (FLSA), as amended
(29 USC §201 et seq.; 29 CFR Parts 510 to 794)

Who is Covered

The Fair Labor Standards Act (FLSA) establishes standards for minimum wages, overtime pay, recordkeeping, and child labor. These standards affect more than 100 million workers, both full-time and part-time, in the private and public sectors.

...

The Act covers domestic service workers, such as day workers, housekeepers, chauffeurs, cooks, or full-time babysitters, if they receive at least \$1,600 (2008) in cash wages from one employer in a calendar year, or if they work a total of more than eight hours a week for one or more employers. (This calendar year threshold is adjusted by the Social Security Administration each year.)

...

The Act exempts some employees from its overtime pay and minimum wage provisions, and it also exempts certain employees from the overtime pay provisions alone. Because the exemptions are narrowly defined, employers should check the exact terms and conditions for each by contacting their local Wage and Hour Division office within the Department of Labor's Employment Standards Administration (ESA).

The following are examples of employees exempt from both the minimum wage and overtime pay requirements:

...

Casual babysitters* and persons employed as companions to the elderly or infirm.

The following are examples of employees exempt from the overtime pay requirements only:

...

Domestic service workers who reside in their employers' residences;

* A "Casual Babysitter" is defined as a care provider whom you pay less than \$1,600 combined in a calendar year)

Breedlove and Associates

<http://www.breedlove-online.com/faqs>

FLSA

According to federal law, household employees are entitled to overtime pay. Overtime must be paid at 1.5 times the regular hourly rate for all hours worked over 40 in a 7-day work week. If a household employee is paid a salary based on a work week of more than 40 hours, the employment agreement should explicitly state the regular and overtime rates of pay.

For example, an employee and family agree upon a gross salary of \$600 per week for a 45-hour work week. The standard wage for the first 40 hours is \$12.63 per hour; the overtime wage for the remaining 5 hours per week is \$18.94 per hour; and the total weekly salary is \$600.

No limit is placed on the number of hours worked in a 7-day work week, as long as the employment contract is fulfilled and the employee is fairly compensated. Please note that live-in household employees do not have to be paid overtime but are entitled to regular pay for every hour worked.

Tax Breaks For Reimbursement/Payment of Health Insurance Premiums

When a household employer contributes toward health insurance premiums, **these dollars are not considered taxable income, meaning neither employer nor employee is required to pay taxes on that portion of the compensation.** Families may choose to pay the healthcare premium directly to the health insurance company or give these dollars directly to their employee. If the health insurance contribution goes directly to the employee, the family must keep a copy of a current health insurance card as proof of insurance.

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Do I need to pay my nanny or housekeeper minimum wage? What about overtime?

Domestic employees have been covered by the Fair Labor Standards Act (FLSA) since 1974.

The FLSA stipulates that domestics (household workers) must be paid at least the Federal minimum wage. The minimum hourly rate \$5.85 (effective 7/24/07); rising to \$6.55 per hour effective July 24, 2008; and to \$7.25 per hour effective July 24, 2009. If your state imposes a minimum wage higher than the Federal minimum, the state amount is in effect.

Overtime compensation coverage hinges on whether the household worker lives in (on the premise) or lives out (come-and-go). **You are required to pay a domestic employee who lives out overtime** (for hours above 40 in a week). Overtime is one and one-half times the normal hourly rate.

Live-in employees must be paid for every hour they work but are not automatically entitled to the overtime differential. (There are some exceptions to the live-in exclusion, notably NY and MD.)

Hours worked include the following:

- All hours on duty, including meal time if the employee is required to remain at the premises during meals.
- Nap time
- Time when children are in school IF nanny is required to be "on call" for any emergencies such as early dismissal, child sick at school, etc.

In general, **hours worked includes all time that the employee is required to be at the employer's home and all time that the employee is required to be 'on call' in the course of his/her duties.**

Source: FLSA's Reference Manual

"Domestic service workers such as day workers, housekeepers, chauffeurs, cooks, or full-time babysitters are covered if:

- (1) their cash wages from one employer in calendar year 2004 are at least \$1,400. (Different amounts would be designated in other calendar years, pursuant to an adjustment provision in the Internal Revenue Code); or
- (2) they work a total of more than 8 hours a week for one or more employers."

Home/Work Solutions Inc.
<http://4nannytaxes.com/faq/exempt-nonexempt-employment.cfm>

Nannies are non-exempt employees of the family they work for.

The Fair Labor Standards Act (FLSA) sets classification guidelines and requires that an employer classify their workers as either exempt or non-exempt based on the FLSA-established criteria.

The term non-exempt employee refers to a worker who IS subject to the terms of the FLSA regarding such issues as overtime compensation and minimum wage coverage, as well as how frequently the worker must be paid.

It is important to note that **the FLSA specifically calls out domestic employment (housekeepers, maids, nannies, etc.) in the statute as non-exempt employees**, covered by the rules and protections of the FLSA. This is not a grey area, subject to individual interpretation.

An exempt employee is paid a salary and exempted from these FLSA rules. Typically, only executive, supervisory, professional or outside sales positions are classified as exempt employment. Exempt employment will also include highly skilled computer-related employees and licensed professionals, such as doctors, lawyers, architects, engineers and certified public accountants.

Employers often believe, incorrectly, that by paying a salary the employee becomes exempt. However, just as applying the labels "employee" or "independent contractor" in a work agreement doesn't determine a worker's actual status in the eyes of the IRS or the law, the same is true for exempt and non-exempt employees in the eyes Department of Labor. The FLSA legislation was designed to cover, and protect, as many workers as possible and **there is no doubt that nannies are covered under the act.**