

# **Paying Minimum Wage and Overtime to Home Care Workers**

A Guide for Consumers and their Families  
to the Fair Labor Standards Act



**WAGE AND HOUR DIVISION**  
UNITED STATES DEPARTMENT OF LABOR

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This guide is meant to help individuals, families, and households that use home care services determine their responsibilities under the **Fair Labor Standards Act (FLSA)**, the federal minimum wage and overtime law that applies to most home care workers.

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# Introduction



# Who needs this guide?

## YOU

When we refer to “you” in this guide, we mean a **consumer** who uses the services of a home care worker.

We also mean any **family member of a consumer** who helps manage those services. Managing the services could include selecting the worker, setting the worker’s schedule, determining what tasks the worker should perform and when, paying for the worker’s services, etc.

“You” also means **any member of the consumer’s household**, such as a domestic partner or other person who lives with the consumer, who helps manage the services.

We have created checklists to help you keep track of your obligations, found at the end of this guide.

**YOU** may be a senior or a person with a disability, or a member of the consumer’s family or household, who directly hires a worker to provide in-home support. Perhaps you used a registry or a website to find your worker, or perhaps you selected someone you already knew, such as a family member.



If this describes you, see the **Direct Hire Checklist** on page 42.

**YOU** may be an individual who has a home care worker living with you or who arranged for a home care worker to live with a family or household member who needs services.



If this describes you, see the **Live-in Direct Hire Checklist** on page 42.

**YOU** may be an individual who goes to an agency to find a worker to provide in-home support for yourself or a member of your family or household. Perhaps you pay the agency for the worker’s services with private funds, or perhaps you receive public assistance, such as through Medicaid. Perhaps the agency sends a worker who moves into your home.



If this describes you, see the **Agency Checklist** on page 43.

**YOU** may be an individual who receives (or helps a member of your family or household arrange) in-home personal care or other services through a Medicaid-funded self-directed program. Perhaps the worker you select lives in your home.






If this describes you, see the **Self-Directed Checklist** on page 43.







# Who needs this guide?

## HOME CARE WORKER

When this guide refers to “home care workers,” we mean workers who provide certain types of services in private homes.

**Home care services** are fellowship and protection, personal care, and/or health-related services, such as assisting a consumer with:

<b>Fellowship &amp; protection</b>			
	Hobbies	Games	Keeping company

<b>Personal care</b>			
	Dressing	Grooming	Bathing
			
	Cooking	Cleaning	Other daily activities

<b>Health-related services</b>			
	Tube feeding	Injections	Other medically related activities

Home care services are provided in a **consumer’s own home**. Personal care and/or health-related services that are provided in a group home, nursing home, residential care facility, or hospital are NOT home care services.

Home care workers are called by a **number of different job titles**, such as home health aide, personal care attendant, certified nursing assistant (CNA), provider, or caregiver.

Home care workers may live in or live outside your home; they may be family members, friends, or people you didn’t know before they began providing services; they may be paid with private funds, Medicaid funds, or some other combination.

# Overview

This guide is about your responsibilities under the **Fair Labor Standards Act (FLSA)**. The FLSA is the federal law that gives most workers in the United States minimum wage and overtime pay protections. We at the U.S. Department of Labor enforce the FLSA, and we recently updated the FLSA rules about home care workers. Under the new rules, most home care workers must now be paid at least the federal minimum wage, and overtime pay. We call this change the “Home Care Final Rule.”

If you use or help manage the services of a home care worker, you may be responsible for paying minimum wage and overtime, and for keeping certain records regarding your home care worker(s). This guide will help you understand if you have those responsibilities and, if you do, how to make sure you pay your home care worker properly under the FLSA.

If you employ a home care worker, you may also have other responsibilities under other laws—such as IRS requirements, Medicaid regulations, or state employment laws—but this guide is NOT about those laws. This guide is only about the federal minimum wage and overtime law.



## Why did the Department of Labor publish the Home Care Final Rule?

The Home Care Final Rule makes sure that home care workers have the same basic wage protections as most U.S. workers, including those who perform the same jobs in nursing homes and group homes. Better wages for home care workers will also help to ensure that consumers have access to high-quality care in their homes from a stable workforce.

# Who needs to follow the FLSA rules



# When you must pay minimum wage and overtime



See **minimum wage and overtime:** page 30

Most home care workers must be paid at least the federal minimum wage and overtime. The relevant question is often who is responsible for making sure these workers are paid according to these FLSA requirements. Whether you are responsible for the worker being paid federal minimum wage and overtime depends on whether you are an “employer” as defined by the FLSA.

## EMPLOYER

It is necessary to look at many facts about a worker’s job to determine who is the worker’s employer under the FLSA. Although many facts matter, anyone who sets the worker’s schedule, tells the worker what tasks to do or when to do them, and/or can hire or fire the worker could be an employer of that worker. This is true even if someone else is also an employer (that is, if there’s joint employment).

Knowing whether **YOU** are an employer is important because if you are, you are responsible for making sure that your home care worker is paid according to the FLSA rules.

Even if you are not considered an employer for other purposes or under other laws, such as paying taxes or according to Medicaid, you may still be considered an employer under the FLSA. This is because courts have defined who is an employer very broadly under this law.



See **joint employment:** page 18

## Am I an employer?

If **YOU** hired the home care worker directly, and no agency or other organization is involved, then you are an employer. **YOU** must ensure that you are following FLSA rules.

If you set the worker’s schedule, tell the worker what tasks to do or when to do them, and/or can hire or fire the worker, you could be an employer under the FLSA. That means **YOU** must comply with the FLSA even if an agency provides the worker. Although those facts do not make you an employer for all legal purposes, they do mean you are an employer for purposes of the FLSA.

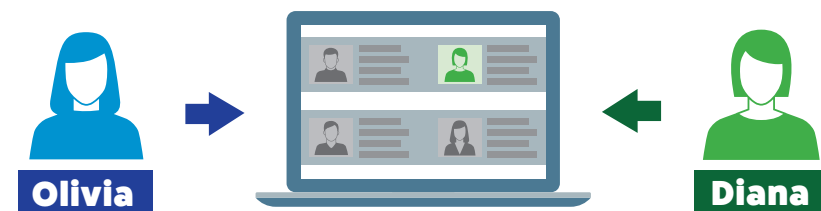


See **Direct Hire checklist:** page 42

## Example: Direct hire

Diana places an ad on a website offering to work as a personal care attendant. Olivia, an individual with a disability who needs personal care services, sees the ad and calls Diana to set up an interview. Olivia likes Diana, so she hires her. Olivia and Diana agree on Diana’s schedule, rate of pay, and job duties.

In this example, Olivia is Diana’s employer. Olivia must follow the FLSA rules described later in this guide.





# When you must pay minimum wage and overtime



**See joint employment:**  
page 18



**See record-keeping:**  
page 36



**See Agency checklist:**  
page 43

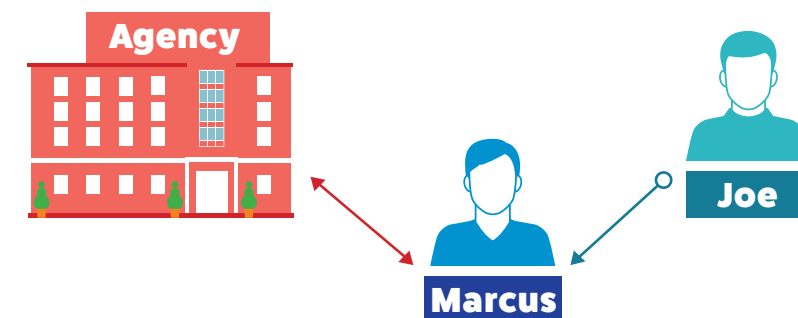
If **YOU** hired the home care worker through an agency, you are probably an employer of that worker. Under the FLSA, an employee can have more than one employer—in this case, both the agency and you. (We call this “joint employment.”)

If you and an agency jointly employ a home care worker, you may rely on the agency to pay the worker and keep required employment records. As an employer under the FLSA, the agency is responsible for following the FLSA rules. But remember that if you are also an employer under the FLSA, you are also personally responsible for any wages that are owed to the worker under the minimum wage and overtime law. This does not mean that the worker gets paid twice—it simply means that if either responsible party does not pay the worker, the other “joint employer” is responsible for paying them.

## Example: Joint employment with agency

Joe needs assistance with daily activities such as dressing and preparing meals so he can live on his own. Joe calls Home Care Agency, which sends a personal care attendant named Marcus to Joe’s home. Home Care Agency trained Marcus, sets Marcus’s pay rate at \$10 per hour, writes Marcus’s paychecks, and could fire Marcus. Joe decides how many hours of services Marcus should provide to Joe each day and tells Marcus what tasks to perform (such as when Joe wants to bathe, what he wants to eat, where he wants to go during the day, etc.).

In this example, Home Care Agency is Marcus’s employer under the FLSA, and Joe is also Marcus’s employer under the FLSA. That means Home Care Agency and Joe are both responsible for making sure that Marcus receives federal minimum wage and overtime pay. Marcus only has to be paid once, but both Home Care Agency and Joe must make sure he is paid according to the FLSA rules.



**See joint employment:**  
page 18

# When you must pay minimum wage and overtime



See  
Self-  
Directed  
checklist:  
page 43

If **YOU** self-direct your services, you are likely the home care worker's employer and **YOU** must comply with the FLSA. (There may be another employer as well, such as a state agency or non-profit organization that participates in arranging the services. This is another example of "joint employment.") As an employer under the FLSA, you may use a fiscal intermediary to help meet your responsibilities, such as by taking care of payroll or tracking hours.

## Example: Self-direction

Sophie, a senior citizen, needs assistance with daily activities (such as dressing and meal preparation) so she can remain in her home. She enrolls in a self-directed waiver program with full budget authority (cash and counseling) offered by her state. She selects her neighbor to be her paid care provider. Sophie's neighbor records his work hours and submits that information to a fiscal intermediary, which pays him at the wage rate Sophie has selected. Sophie tells her neighbor what tasks she needs him to perform.

In this example, Sophie is her neighbor's employer, and she is responsible for paying him according to FLSA requirements.



**Most home care workers are employees, NOT independent contractors.**

Some employers misclassify home care workers as "independent contractors." Whether this label is used correctly for purposes of the FLSA depends on whether you are (or someone else is) an FLSA employer as described in this guide. In other words, it depends on the relationship between you and the worker, not the worker's title (including if the worker is called an "independent provider") or their status under other laws. **Generally, under the FLSA, most workers are employees and not independent contractors.**



For more information on determining if someone is an independent contractor, see Fact Sheet #13: Am I an Employee?: Employment Relationship Under the Fair Labor Standards Act (FLSA).

[www.dol.gov/whd/regs/compliance/whdfs13.pdf](http://www.dol.gov/whd/regs/compliance/whdfs13.pdf)

# Exemption from minimum wage and overtime rules



## Joint employment

Under the FLSA, a home care worker might be employed both by the person receiving services (or his or her family or household) *and* an outside employer, such as an agency. This is called **joint employment**. For example, a family and a private home care agency could both employ a personal care assistant. Or, in a consumer-directed program run through a state Medicaid agency, a person receiving home care services and the state agency administering the program could both employ a home health aide.

In these situations, we call the agency the third party employer. Third party employers **always** have to pay home care workers the federal minimum wage and overtime compensation.

When a worker has more than one employer, each employer is responsible for making sure the worker is paid according to the FLSA rules, but the worker only has to be paid once. So if an agency pays your home care worker properly, your obligations are met—but if it doesn't, you could have to pay the wages owed.



Guidance on joint employment situations is available on our Home Care website.

[www.dol.gov/homecare/joint\\_employment](http://www.dol.gov/homecare/joint_employment)

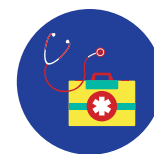
In some limited circumstances, consumers and their families or households are not required to pay a home care worker federal minimum wage and overtime pay. If a home care worker provides mostly fellowship and protection, which means she spends most of her work time watching over the consumer and keeping the consumer company, then an exemption from the wage requirements might apply. We call this the “**companionship services exemption**.”

Any employer other than you (like an agency) must **always** pay federal minimum wage and overtime. If a home care worker is employed by an outside employer, such as a home care agency, then that employer is responsible for paying the worker at least the federal minimum wage and overtime pay even if you are not.

The companionship services exemption is narrow. You may use it only if:



Your home care worker spends **no more than 20%** of his or her total working time in a workweek assisting with personal care, such as bathing, dressing, toileting, grooming, cooking, cleaning, etc.;



The worker **does not** perform any medically related tasks, which are tasks that are usually done by a nurse or certified nursing assistant, such as tube feeding or catheter care; or

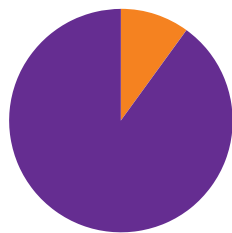
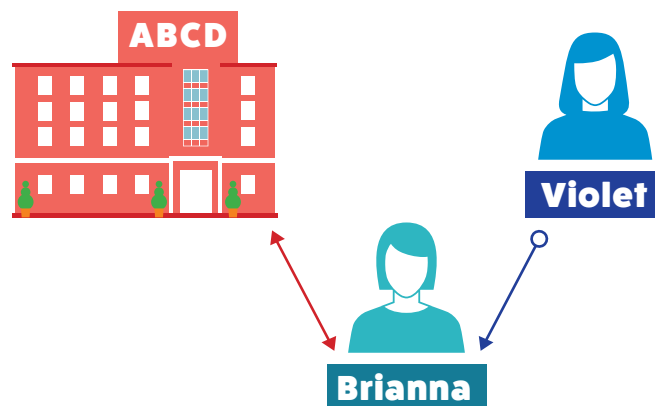


The worker **does not** perform any general household work that is mostly for members of the household other than the consumer, such as doing laundry or cooking meals for the entire household.

# Exemption from minimum wage and overtime rules

## Example: Companionship services

Brianna is a home health aide who works for the ABCD agency. She has been assigned to assist a senior citizen named Violet who lives on her own. Violet occasionally needs Brianna's help with getting dressed and preparing meals. She tells Brianna when to come to her home, what to do while she's there, and when to leave. Brianna spends 10 hours per week with Violet, but she only spends one hour per week providing personal care to Violet. During the other nine hours, Brianna keeps Violet company and participates in some of Violet's hobbies.



**1 hour per week of personal care**  
**9 hours per week of fellowship and protection**

Under the FLSA, Brianna is employed both by ABCD and by Violet. Regardless of the duties Brianna performs, the agency must pay Brianna at least the federal minimum wage and overtime.

But Violet herself may claim the companionship services exemption because Brianna mostly provides fellowship and protection to Violet, and she spends less than 20% of her work time (only 1 of 10 hours) performing personal care services for her. Only the agency is responsible for making sure Brianna receives the minimum wage and, if Brianna works more than 40 hours per week, overtime pay. If Brianna is not paid according to the FLSA rules and there is a lawsuit for her unpaid wages, only the agency would be responsible under the FLSA.

# Employment of family members as home care workers



**See joint employment:**  
page 18

If a family (or household) member of the consumer is paid to provide home care services, whoever is managing the services is the family member's employer under the FLSA. For example, the consumer and a home care agency could jointly employ the consumer's son or father.

In those circumstances, family members must receive the minimum wage and overtime pay for all time that is within the employment relationship. But family care providers also have a familial relationship with the consumer. Time within the familial relationship is not subject to the FLSA's minimum wage and overtime pay requirements. This can include time spent providing "natural supports," or unpaid assistance provided by the family member. (Note that these are special circumstances for family or household members. Any other home care worker must be paid for all time spent providing services.)

When a family member is a paid care provider, the Department of Labor looks at the plan of care or other written agreement describing the paid services, because that document shows what time falls under the employment relationship and what time is instead part of the family relationship. But the employment relationship is limited to the paid hours in a plan of care only if the family care provider is treated in the same way any other worker would have been treated. Most importantly, the number of paid hours cannot have been reduced because the paid care provider is a family or household member of the consumer.



**See minimum wage and overtime:**  
page 30

Keep in mind that the U.S. Department of Labor cannot assess or influence determinations about the type or amount of services a plan of care authorizes.

## Example: Paid family care provider

Martha is a paid provider of home care services for her brother Charles. Charles's plan of care authorizes him to receive 40 hours of personal care services per week. After Martha worked the 40 hours for the week, on a Saturday evening Martha and Charles decided to go to a restaurant for dinner and then to a movie. While they were out, Martha helped Charles eat his meal and take his seat in the movie theater.

In this example, Martha must be paid according to the FLSA rules for the 40 hours of paid services she provided. But as long as the plan of care would have provided the same 40 paid hours regardless of who Charles selected as his paid care provider, the time Martha spent with Charles at dinner and the movie is outside the scope of their employment relationship and is not required to be paid.



See Fact Sheet #79F: Paid Family or Household Members in Certain Medicaid-Funded and Certain Other Publicly Funded Programs Offering Home Care Services Under the Fair Labor Standards Act (FLSA).

[www.dol.gov/whd/homecare/factsheets.htm](http://www.dol.gov/whd/homecare/factsheets.htm)



# Live-in home care workers



See **minimum wage and overtime:** page 30

A special FLSA rule applies to home care workers who live in the same home as the consumers they work for (called **“live-in” home care workers**). They are entitled to receive at least the federal minimum wage for all their hours worked, but are not required to receive overtime pay. This is called the **“live-in domestic service employee exemption.”**

Only consumers and their families and households may claim the live-in domestic service employee exemption. Agencies or other outside employers of live-in workers must always pay overtime, even though you are not required to.



## What is a “live-in” home care worker?

To be a “live-in” home care worker, the employee must either live at the consumer’s home full-time (that is, have no other home of their own), or spend at least 120 hours or five consecutive days or nights in the consumer’s home per week.

A live-in home care worker could be a family member of the consumer or a provider who moved into a consumer’s home as part of a shared living arrangement.

Workers who come to a consumer’s home for 24-hour shifts but are not present for at least 120 hours each week or for five consecutive days or nights are not live-in workers.

In determining the number of hours for which a live-in home care worker must be paid, you and your employee can create an agreement regarding the worker’s schedule. It can exclude from work time:



Sleep time,



Meal breaks, and



**Other periods of off-duty time** when the worker may either leave or stay at the home for purely personal pursuits (provided such a personal break is long enough for the worker to make effective use of the time).



See **hours worked:** page 35

You and your live-in home care worker can reach any agreement regarding paid time that is reasonable given the facts of your situation. However, if any part of the time that is supposed to be for sleeping, meal breaks, or other periods of free time is interrupted by work, the worker must be paid for the time spent working. You and your live-in home care worker should update the agreement whenever there are significant differences between the unpaid times in the agreement and the worker’s actual schedule.



See Wage and Hour Division Fact Sheet 79B, Live-in Domestic Service Workers Under the FLSA, for more information about live-in home care workers and how they must be paid.

[www.dol.gov/whd/homecare/factsheets.htm](http://www.dol.gov/whd/homecare/factsheets.htm)



# Live-in home care workers



See **Live-in Direct Hire & Agency checklists:** pages 42-43



See **section 3(m) credit:** page 30

## Example: Live-in hired through agency

Stanley needs home care services, so he calls Local Home Care Agency (Local), which sends Mary to work for him. Mary moves out of her apartment and into Stanley's home, and she provides daily personal care services to Stanley. Stanley and Mary agree on her work schedule, and Stanley tells Mary what tasks he would like her to perform. Local sets Mary's pay rate at \$10 per hour.

In this situation, Local is Mary's employer under the FLSA and Stanley is Mary's employer under the FLSA. Both Local and Stanley are responsible for making sure Mary receives at least the federal minimum wage. Only Local is responsible for making sure that Mary receives overtime pay, because Stanley, and only Stanley, can use the live-in domestic service employee exemption.

Because Mary is a live-in worker, it might be that Stanley and Local can count the value of the housing she receives toward the wages he is required to pay.

## Example: Live-in hired directly

Stanley needs home care services, so he calls a registry, which gives him a few names of potential workers to interview. Stanley meets Mary and hires her. They agree that Mary will move out of her apartment and into Stanley's home, and she will provide daily personal care services to Stanley there. Stanley and Mary create a written work schedule for Mary and agree that Mary's pay rate will be \$10 per hour.

In this example, because Mary is a live-in home care worker whose only employer is Stanley, she must receive at least the minimum wage, but the FLSA does not require that she receive overtime pay.

Because Mary is a live-in worker, it might be that Stanley can count the value of the housing she receives toward the wages he is required to pay.



See **Live-in Direct Hire checklist:** page 42



See **section 3(m) credit:** page 30

# How to follow the FLSA rules







# Minimum wage



See  
hours  
worked:  
page 35

As of early 2016, the **federal minimum wage** is \$7.25 per hour. That means any worker who is covered by the FLSA minimum wage protections must be paid at least \$7.25 an hour for all hours worked.

## Example: Hourly rate

Your home care worker comes to your home five days each workweek for five hours each day, for a total of 25 hours each week. (A workweek is any set seven-day period. For example, your workweek could be Monday to Sunday.) You pay your home care worker \$10 per hour, for a total of \$250 each week. You have complied with the FLSA's minimum wage requirement.



## Credit toward wages for housing and meals provided to employees

Under certain circumstances, the FLSA allows you to count the cost of housing and food you provide to your home care worker toward the worker's minimum wage payment. For more information, visit the Department's Home Care website and click on "Credit toward Wages under Section 3(m) of the FLSA for Lodging Provided to Employees."

[www.dol.gov/whd/homecare/credit\\_wages.htm](http://www.dol.gov/whd/homecare/credit_wages.htm)

## Example: Daily rate

You pay your home care worker \$50 each day she comes to your house to provide services. One workweek, she comes five days and works a total of 25 hours. In that week, the worker would have received \$250 (\$50 per day x 5 days). That means her hourly rate of pay would be \$10 (\$250 total pay for the workweek / 25 hours). Because \$10 is more than \$7.25, you would have complied with the FLSA's minimum wage requirement.

The next workweek, the home care worker comes to your house on five days, but she stays later on a few of those days and works a total of 40 hours. In that week, the worker would have received \$250 (\$50 per day x 5 days). That means she would have received only \$6.25 per hour (\$250 total pay for the workweek / 40 hours). You would owe her an additional \$1 per hour to reach the federal minimum wage of \$7.25, or \$40 (\$1 per hour x 40 hours).

### Week 1

$$\frac{\$250}{25 \text{ hours}} = \$10.00 \text{ per hour}$$

Meets federal  
minimum wage  
requirement

### Week 2

$$\frac{\$250}{40 \text{ hours}} = \$6.25 \text{ per hour}$$

\$1.00 for each hour  
worked to reach  
federal minimum wage



# Overtime pay



See hours worked: page 35

**Overtime pay** means one and a half times a worker's regular rate of pay. If overtime pay is due, the worker must receive it for every hour worked over 40 hours in a workweek.

**Reminder:** A workweek is any set seven-day period (for example, Monday to Sunday).

## Example: Overtime calculations

Ellen is a certified nursing assistant employed by a home care agency and consumers who need assistance with medically related tasks. Her pay rate is \$10 per hour. The agency must follow the FLSA rules, including paying her overtime, because agencies cannot claim the companionship services exemption. The consumers who are her employers must follow the FLSA rules, including paying her overtime, because she performs medically related tasks for them and does not live in their homes.

If this is Ellen's schedule in a certain workweek:

Day of Week	Time In	Time Out	Time In	Time Out	Hours Worked
Monday	6:00am	11:00am	2:00pm	7:00pm	10
Tuesday	6:30am	4:30pm			10
Wednesday	6:00am	11:00am	3:30pm	7:00pm	8.5
Thursday	6:00am	11:00am	3:00pm	10:30pm	12.5
Friday	6:30am	3:30pm			9
<b>Total</b>					<b>50</b>

## Ellen is paid as follows:

Ellen must receive at least the federal minimum wage for all 50 hours worked in the workweek and overtime pay for the 10 hours over 40 in the workweek.

She receives \$10 per hour for each of the first 40 hours in the workweek, which is \$400. She receives \$15 per hour for each of the 10 hours over 40 in the workweek, because one and a half times \$10 is \$15. That equals another \$150. So if Ellen receives \$550 total, she has been paid according to the FLSA overtime pay requirement.

## Workweek

$$\$10 \times 40 \text{ regular hours} = \$400$$

$$\$15 \times 10 \text{ overtime hours} = \$150$$

$$\$400 + \$150 = \$550 \text{ in this workweek}$$

**Reminder:** The worker only needs to be paid once. So if an agency or fiscal intermediary writes checks to your home care worker that include all of the wages owed, you don't have to pay any additional wages to the employee.



# Hours worked



## Other minimum wage and overtime laws might apply



Some states have established minimum wage and overtime requirements that require higher payments to home care workers than these federal standards.

Where both laws apply, you must

follow the law that provides the higher wage to the employee. Check your state laws to learn more. You can find your state law at [www.dol.gov/whd/minwage/america.htm](http://www.dol.gov/whd/minwage/america.htm)



## What if I use an agency?

When selecting an agency to find a home care worker, consider asking that agency if they're aware of and follow all federal labor laws, and pay their workers at least the federal minimum wage and overtime.

**Hours worked** means time that an employee works for which an employer must pay.

The FLSA requires payment for all time when the worker is providing services or is required to be available to provide services. For example, if your home care worker is cooking for you or helping you get dressed, that time must be paid for, and is considered “hours worked.” Or if you are napping and the worker must be available whenever you wake up, the worker’s time is hours worked, even if she spends the time watching TV.

Time does not count as hours worked if an employee has a break long enough to use the time for his or her own purposes. For example, if your home care worker is free to go to a movie, run a personal errand, or attend an event at her child’s school, the worker does not have to be paid for this time.



For more information on how to determine what time is “hours worked” that must be paid under the FLSA, see Wage and Hour Division’s Fact Sheet #79D, Hours Worked Applicable to Domestic Service Employment Under the FLSA.

[www.dol.gov/whd/homecare/factsheets.htm](http://www.dol.gov/whd/homecare/factsheets.htm)



# Recordkeeping



See  
hours  
worked:  
page 35

If your home care worker must be paid minimum wage and/or overtime, then someone must keep basic employment records. If you have hired a home care worker directly, you must keep the records. If you use an agency or fiscal intermediary, they may keep the records, as long as you can access the records if you need to.

Basic records employers must keep for each employee include:

1. Full name;
2. Social security number;
3. Home address;
4. Hours worked each day and total hours worked each workweek;
5. Total cash wages paid each week to the employee by employer, including any overtime pay; and
6. Any weekly amounts claimed by the employer as part of wages for housing or food provided to the employee.

**NOTE:** Records of wages paid (payroll records) must be kept by an employer for at least three years. Records used to calculate how much pay is owed (time cards, work and time schedules, and records of additions to or deductions from wages) should be kept for at least two years.



See  
minimum  
wage and  
overtime:  
page 30



See  
section  
3(m)  
credit:  
page 30

## Additional recordkeeping requirements for live-in home care workers

An employer and a live-in domestic service employee may enter into an agreement regarding the employee's meal, sleep, and other off-duty time. If you and your home care worker have one of these agreements, you must keep a copy of it.

An employer must also keep accurate records of time actually worked by the live-in home care worker, to confirm that it matches the agreement or show how it was different from the agreement. As with other records, a home care agency or other employer of your worker can create and keep these records, as long as you can access them. If you are keeping the records yourself, you may assign the employee the task of creating those records and submitting them to you, but you are responsible for having them.



### A tip for capturing work times

You can use any timekeeping method that works for you and that accurately tracks your home care worker's work time each day. Many individuals and families who employ home care workers find that it works well to keep a calendar to record start, stop, and meal times each day. You may also use a timesheet like the sample pictured, or any other method, as long as it is accurate.

# Consequences of not complying with the FLSA

## Weekly Time Sheet Sample

### Employee Information

Full Name:

Social Security Number:

Home Address:

Day of Week	Date	Time In	Time Out	Hours Worked
Monday				
Tuesday				
Wednesday				
Thursday				
Friday				
Saturday				
Sunday				
<b>Total Hours</b>				

If you are responsible for paying a home care worker at least the federal minimum wage and overtime and that worker does not receive all wages due, you are violating federal law. Your worker can sue you or file a complaint with the Department of Labor asking the Department to investigate. If it is found that you haven't paid the full amount of wages owed under the FLSA, you will have to pay the missing amount—and possibly even double that amount—to your worker.

# Other resources





# Checklists for paying home care workers properly

## Direct Hire

If **YOU** hired a home care worker directly, and that worker does not live with you, make sure **YOU**:

- Pay the worker the federal minimum wage for all hours worked up to 40 in a week.
  - Pay overtime pay (one and a half times the employee's regular hourly rate) for any hours over 40 in a week.
  - Keep basic employment records.
  - Count all hours worked.
- \*In certain cases, you may

be able to use the companionship services exemption, meaning you do not have to pay minimum wage and overtime. Go to page 19 to learn if your worker qualifies.

## Live-In Direct Hire

If **YOU** hired a home care worker directly and that worker lives with you, make sure **YOU**:

- Pay the worker the federal minimum wage for all hours worked.
- Keep basic employment records.
- Count all hours worked.
- Strongly consider having a written agreement about schedules, breaks, sleep time, etc.

\*For an explanation of which home care workers are "live-in" employees, go to page 24.

## Agency

If **YOU** hired a home care worker through an agency or non-profit organization:

- You are probably legally responsible for making sure the worker receives at least the federal minimum wage and, if the worker does not live with you, overtime pay, although the agency or non-profit organization can take care of that obligation for you.
- Make sure the agency you are using is paying the worker properly and recording all hours worked.
- Make sure the agency is keeping basic employment records, and that you can access them if you need to.

## Self-Directed

If **YOU** hired a home care worker through a Medicaid-funded, self-directed program:

- You are legally responsible for making sure the worker receives at least the federal minimum wage and, if the worker does not live with you, overtime pay.
- If you use a fiscal intermediary, make sure the fiscal intermediary pays the worker properly and records all hours actually worked.
- Make sure the fiscal intermediary, state agency, or regional center keeps basic employment records, and that you can access them if you need to.

# Additional Information

Please visit our website at [www.dol.gov/homecare](http://www.dol.gov/homecare) for more information about how the FLSA applies to home care, including:

- fact sheets,
- frequently asked questions,
- webinars,
- and shared living guidance.

Or you can call **1-866-487-9243** to ask questions about the FLSA.

**The U.S. Department of Labor provides this information as a public service, to help individuals comply with the Fair Labor Standards Act and Department of Labor regulations. Parties remain independently responsible for determining whether the wages they pay comply with federal law. Therefore, we make no express or implied guarantees. The Federal Register and the Code of Federal Regulations remain the official sources for regulatory information published by the Department of Labor.**



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**WAGE AND HOUR DIVISION**  
UNITED STATES DEPARTMENT OF LABOR

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