

Household Workers

YOUR LEGAL RIGHTS

Employees who work in a private household for an individual or family are covered by laws specific to that work. This Fact Sheet addresses some of the questions that commonly arise for these employees. (Note: employees who are employed directly by private firms, rather than by an individual or household, are covered by general employment laws and are not addressed here.)

1. Do minimum wage laws apply to me?

Yes. The state minimum wage applies to all employees, including household workers. So, for every hour you work you must be compensated at a rate of at least the state minimum wage or higher. The California minimum wage is \$7.50 per hour effective January 1, 2007 and \$8.00 per hour effective January 1, 2008.

2. Should I get paid extra for working overtime?

For household workers who do not live at their place of employment and are not “personal attendants” (see below for the definition of a personal attendant), overtime rules are the same as for any other employee, meaning that they should be paid one and one half times their regular rate of pay for working more than eight hours in a day or more than forty hours in a week. (See our Fact Sheet titled “**Overtime Pay**” for more information.). On the other hand, there are special rules for live-in employees and personal attendants, as explained below.

Live-In Employees

Live-in employees in private households are generally entitled to twelve consecutive hours free of duty during each 24-hour workday. In addition, during the twelve consecutive hours of “work” time, the employee needs to be provided at least three hours of free time. The effect of this rule is that a live-in employee who works more than nine consecutive hours in a day must be paid overtime (time and a half) for the hours over nine because the employee wasn’t given three hours of free time. Further, the law suggests that even if a live-in employee works less than 9 hours a day, if they do not have twelve hours off during each workday, they should be paid time and a half for any hours that they work during what should be their twelve hours off.

In addition, if a live-in employee works more than 5 days per week, the employee must be paid overtime for all hours worked on the sixth and seventh day (time and a half for the first 9 hours, and double-time thereafter).

Personal Attendants

A personal attendant is a baby sitter or an employee who works in a private household to supervise, feed, or dress a child or anyone else that needs supervision because of their age or disability. These duties include activities related to personal care, such as bathing, showering, getting in or out of a bed or chair, and using a toilet. Personal care duties also include other duties that cannot be performed by the person needing care, including assistance in obtaining medical care, preparing meals, managing money, shopping for groceries or personal items, using a

telephone or performing housework. If you live in the home you are not considered to be a “personal attendant.” (See the “Live In Employees” section above for more information.)

If you meet the above definition of a personal attendant in a private household, you are *not* entitled to overtime compensation. However, if you also do general housework such as making beds, cooking, cleaning or running errands, and that housework exceeds **20%** of your overall duties, you are no longer considered to be a personal attendant, and are therefore entitled to overtime compensation.

Personal attendants who are employed by *non-profit organizations* cannot work over 40 hours a week or all seven days of the week except in case of emergency. If (in an emergency) they do work over 40 hours in a week or all seven days in any week, they must receive overtime pay. Their overtime rate is 1.5x their regular pay for any hour worked over 40 in a week or any hour worked on the seventh day of the week. (Unlike other employees entitled to overtime, personal attendants working for non-profit agencies do not receive overtime for working more than eight hours in a day.)

3. Must I be paid while I am sleeping?

If you are on duty for less than 24 consecutive hours, all of those hours must be paid even if you are permitted to sleep during those hours.

On the other hand, if you are on duty for 24 hours or longer, a regularly scheduled sleep period of up to eight hours may be uncompensated if your boss provides you with adequate sleeping facilities and if you receive at least five hours of uninterrupted sleep time. If you do not receive at least five consecutive hours of uninterrupted sleep, the entire sleep period must be compensated. Further, even if you receive at least five hours of uninterrupted sleep, you must still be compensated for any time that you have to work during your arranged sleep period.

Further, live-in employees are not required to be paid for sleeping time. They are only required to be paid for hours actually spent carrying out assigned duties.

4. Is there a maximum number of hours that I can be required to work?

In general, employers may require you to work any number of hours during a given week so long as they pay you appropriately, including overtime pay as described above. However, there are three limited exceptions.

- First, you are entitled to one day of rest out of every seven days worked. This limited exception does not apply to employees who work fewer than 30 hours in a given week, emergencies, and work performed to protect life or property.
- Second, live-in employees cannot work more than 5 days per week except in an emergency. As noted above in the section on overtime, in the case of an emergency, the employee can work but must be paid overtime for that work.

- Third, personal attendants (as described above) employed by *non-profit organizations* may only work 40 hours per week and/or six days a week, except in emergencies. As with the previous exception, where the employee works in the case of an emergency, they must be paid overtime.

5. Can my employer deduct meals and housing from my wages?

Yes, if your boss provides you with meals and/or housing, he can subtract those meals and housing from your paycheck according to specific rules. In order for your employer to subtract meals and/or housing, three things must happen: (1) you must actually receive or use the meals and/or housing; (2) meals and/or housing are used as compensation in order to meet the minimum wage; AND (3) you enter into a voluntary and written agreement to credit the meals and housing towards your minimum wage. Your employer cannot force you to take these deductions and cannot charge more than the actual cost (if less than the amounts below).

Meals must be adequate and nutritious and can be deducted at the following rates: Breakfast - \$2.45; Lunch - \$3.35; Dinner - \$4.50. Housing must be suitable, decent, and clean, and you cannot be required to share a bed. Housing can be credited for the following amounts:

Type of housing	Amount deducted
Room used alone	\$31.75 per week
Room shared	\$26.20 per week
Apartment	2/3 of regular rental value, but not more than \$381.20 per month
Apartment used by you and your partner who are both employed by the same employer	2/3 of regular rental value, but not more than \$563.90 per month

Other than meals, housing, and taxes, your employer generally cannot deduct anything from your paycheck. If you happen to break or lose something, your employer cannot deduct that amount or require you to pay back the item’s value unless it can be shown that the breakage or loss was caused by a dishonest act or done on purpose. Your employer can discipline you, but cannot place the financial burden on you. Your employer also is not allowed to deduct the cost of anything that is used by you primarily for their benefit, such as tools, uniforms, and cleaning supplies.

6. Do I need to be given meal and rest periods?

Like other kinds of employees, household workers are entitled to meal and rest breaks in many circumstances. Employees are entitled to a ten-minute paid rest break for every four hours they work, and a thirty-minute meal period for every five hours worked.

Personal attendants (as described in the above section titled “overtime”), are not required to be given meal and rest periods.

7. How often must I be paid?

Generally, household workers, like most employees, must be paid twice a month. However, for live-in domestic employees, employers are only required to pay employees once a month.

8. Do discrimination laws apply to household workers?

Both state and federal laws prevent discrimination on a number of criteria, including race, sex, national origin, age, and disability. However, almost all discrimination laws are not applicable to employers with fewer than five employees, which means that most household workers will not be protected by these laws.

9. Do workers' compensation laws apply to household workers?

Workers' compensation is generally available to household workers who are injured just as it is available to other injured employees. However, household workers may be excluded if they meet any of the following:

- Worked less than 52 hours for the employer in the 90 days before the injury happened;
- Employed by a spouse, parent, or child; OR
- Earned less than \$100 in the 90 days before the injury.

Many individuals who employ household workers mistakenly neglect to pay into the workers' compensation system. In that case, if your claim is approved by the Workers' Compensation Appeals Board, your employer will be ordered to pay. If your employer is unable to pay your benefits, then the state will pay you through the Uninsured Employer's Fund (UEF). Benefits available through the UEF include medical expense reimbursement, lost wages, and permanent disability benefits. Although most normal workers' compensation insurance carriers will pay undocumented workers, benefits from the UEF are unavailable to most undocumented workers. For more information on workers' compensation and how to apply for benefits, see our Fact Sheet titled "**Workers' Compensation Overview.**"

10. Am I an independent contractor?

Employers sometimes misclassify workers as "independent contractors" to avoid the coverage of many worker protections (*e.g.*, minimum wage, overtime, workers' compensation, etc.) by labeling workers as independent contractors. Because household workers often work on their own, they may be especially at risk of this misclassification. Remember, however, that the fact that an employer says you are an independent contractor does not necessarily mean that you are.

There is no single factor to determine if you are an independent contractor. However, the primary issue is whether the employer has the *right to control* the manner and means of the work. If the employer can exercise control over the way in which you complete your job (how, when, and where you do the work), you are generally an employee. In addition, employees (as opposed to independent contractors) generally work under extensive supervision and conduct a job a certain way. Household workers who only work for one family or household who controls their hours are very likely to be considered employees. On the other hand, a household worker who has multiple clients and is in essence running their own household services business is likely to be an independent contractor who will not be covered by the worker protections described in this Fact Sheet.

This fact sheet is intended to provide accurate, general information regarding legal rights relating to employment in California. Yet because laws and legal procedures are subject to frequent change and differing interpretations, the Legal Aid Society - Employment Law Center cannot ensure the information in this fact sheet is current nor be responsible for any use to which it is put. Do not rely on this information without consulting an attorney or the appropriate agency about your legal rights in your situation.

For further information about your employment rights, please call:

The Workers' Rights Clinic

415-864-8208 (SF Bay Area) or **866-864-8208** (Toll Free in CA)

The Workers' Rights Clinic is a project of The Legal Aid Society - Employment Law Center, a non-profit organization focusing on the employment-related legal rights of low-income workers and providing free legal information on a wide range of employment-related problems.

