Household Workers YOUR LEGAL RIGHTS

Tagalog

If you work in a private household – whether you are employed by an agency or directly by an individual or family – you are covered by laws specific to that work. This Fact Sheet addresses some of the questions that commonly arise for household employees.

1. Do minimum wage laws apply to me?

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   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. The California minimum wage is $8.00 per hour (effective January 1, 2008).

2. Should I get paid extra for working overtime?

   For many household workers, overtime rules are the same as for any other employee. That is, you should be paid one and one half times their regular rate of pay for working more than eight hours in a day, more than forty hours in a week, and for the first eight hours worked on the seventh consecutive day in a workweek. Additionally, you should be paid doubletime at twice their regular rate of pay for working more than 12 hours in a day or more than eight hours on the seventh consecutive day. (See our Fact Sheet titled "Overtime Pay" for more information.).

   However, there are special rules for live-in employees and those caregivers who are considered personal attendants, as explained below.

   Live-In Employees

   Live-in employees in private households are those who are required to remain on the premises. If you live-in your employer's house, you 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, you need 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 hours in a day must be paid overtime (time and a half). Further, the law suggests that regardless of the number of hours worked each day, if you do not have twelve consecutive hours off during each workday, you should be paid overtime for any hours you worked during what should be your twelve hours off. In addition, if you work more than 5 days per week under non-emergency situations, you 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

   Caregivers who meet the legal definition of "personal attendant" are not entitled to earn overtime premium pay, no matter how many hours they work in a day, or how many days they work in a week. Personal attendants are also excluded from other protections, mentioned below. A personal attendant is a caregiver who works in a private household to supervise, feed, or dress anyone that needs supervision because of their age or disability. This includes babysitters and elderly companions. To be considered a personal attendant, you must spend most of your time (that is, over 80% of the hours that you work in a week) performing caregiving duties. 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. These can 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 or using a telephone. However, if you also do housework such as making beds, cooking, cleaning or running errands, you may not be considered a personal attendant. This often happens in situations where there are other individuals in the household (besides the care recipient) who benefit from the services that the caregiver is providing. If you spend more than 20% of your time performing housework or other general tasks, you are not a personal attendant. Additionally, according to the California Labor Commissioner, a caregiver who performs nursing duties, regardless of the amount of time or number of duties assigned to them, is not a personal attendant.

3.

Must I be paid while I am sleeping?

As a household worker, you must be paid for all hours that you are on-duty, even if you are permitted to sleep during those hours.

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. However, there are two limited exceptions:

- First, household workers 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. If you are not given one day off out of every seven, you are entitled to earn overtime premium pay for your work on the seventh consecutive day, unless the work was performed because of an emergency or to protect life or property.
- Second, live-in employees cannot work more than 5 days per week except in an emergency. If you are required to work more than 5-days in a week under non-emergency conditions, you must be paid overtime premium rates for that work. In both of these situations, if you are required to work because of an emergency, you must be compensated for the work you performed at your regular rate of pay.

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) your boss offers meals and/or housing as compensation to satisfy minimum wage requirements; 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.

There are strict limits on the amount that your boss can charge for meals and/or housing. Your employer 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 per day;
- Lunch: $3.35 per day; and
- Dinner: $4.50 per day.

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 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?

Household workers are generally entitled to meal and rest breaks. Most household workers 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"), however, 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. 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. California law prohibiting sexual harassment, however, applies to household workers even if the worker is the only person who works for their employer.

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, you have two options. First, you can pursue a claim through the Workers' Compensation Appeals Board. If your claim is approved, 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." Second, household workers whose employer has not purchased workers' compensation insurance may also pursue a claim against their employer based on premises liability and general tort laws. Often, an employer's homeowners or renters insurance will provide coverage for these claims.

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. Merely because your 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.

For further information about your employment rights, contact the Workers' Rights Clinic.

Disclaimer

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 rights in your particular situation.