



Ten Tips:

Privately Employed Senior Care Workers

The following information applies to household workers whom you pay directly. If you contract these services through a third party, you make all payments to the third party, and the third party employs the caregiver, you are not legally the employer of the caregiver.

1. Employer Taxes & the Senior Care Worker

The Internal Revenue Service requires payroll tax filings by a domestic employer who pays a household employee directly more than \$2200 cash wages in a calendar year. These payroll tax obligations may include:

- Social Security & Medicare Taxes (7.65% of Gross Wages)
- Federal Unemployment Tax (FUTA) (0.6% of Gross Wages)
- State unemployment and disability insurance taxes levied on the employer.

Examples of job titles that are typically considered household employees include home health aide, companion, housekeeper, cleaning lady, senior caregiver. We provide more information about [distinguishing a household employee from an independent contractor here](#).

2. Your Senior Care Worker's Taxes

Your household employee contributes to or pays via paycheck deductions:

- Social Security & Medicare Taxes (7.65% of Gross Wages)*
- Employee Disability/Unemployment Taxes where required.
- Federal/State Income Taxes

* You must deduct this – if you fail to deduct you become financially responsible for paying.

3. Hourly Rate Defined

Household employees are “non-exempt” under the Fair Labor Standards Act (FLSA), which means they are paid an hourly rate, not a ‘salary’, and most are protected under minimum wage and overtime laws. There is a limited exemption for companionship care for the elderly and infirm (see #4). [HomeWork Solutions' Hourly Rate Calculator](#) will translate a desired weekly pay rate into FLSA compliant hourly rate terms.

4. Companionship Exemption Re-Defined (2015)

Currently, companionship services provided to a private family or individual are NOT covered by the FLSA's minimum wage and overtime rules. "[Companionship services](#)" means services for the fellowship, and protection of persons who, because of advanced age or physical or mental infirmity, cannot care for themselves.

Important to note, is that the definition of exempt senior companionship services stipulates that any personal care services must not exceed 20% of the time worked, and prohibits any general household work that benefits the entire household.

"I could do this myself but HomeWork Solutions is so easy to work with. Dealing with seniors every day, I know the assurance that required paperwork is completed accurately, reliably and on time for senior care is invaluable"
- Stacy C., Attorney, Washington D.C.

"Please renew my annual service. I did find a new nanny, Mary Poppins to be exact ;-), and I will be needing your services again. Thanks for a great service!"
- Janine M., Mother, Cary, NC

Eleven states have minimum wage and overtime laws that override the Federal companionship services exemption – [know your local laws!](#)

5. Hours Worked Defined

Hours worked include all hours on duty, including meal time if the employee is required to remain on the premises during meals. The FLSA allows up to 8 hours of "sleep time" to be uncompensated for 24 hour overnight care that is BOTH contiguous with two scheduled work days AND truly affords the caregiver a minimum of 5 hours of uninterrupted sleep. California does not permit the sleep time exclusion.

6. Comp Time (*Compensatory time off*)

Under federal law, providing compensatory time off or 'comp time' instead of paying for overtime pay is generally only legal for government employees. The FLSA requires that hourly (non-exempt) employees get paid overtime for all hours worked over 40 in a 7-day workweek, as established by the employer. All domestic service workers are hourly employees under law. (Note: Some states such as California require overtime pay for hours worked over 8 in a day.)

7. Record Keeping Requirements

Federal law requires employers keep accurate and contemporaneous time tracking records. When a dispute with an employee about hours and pay occurs and the employer is unable to show accurately recorded time records, courts will favor the employee's claims and records. The US Department of Labor has approved smart phone apps that facilitate employee time tracking. These apps make it easy for the household employee to track his/her own work hours, creating an independent record in a Wage and Hour dispute!

8. Payroll Deduction Records

It is a best practice to provide your household employee with a pay stub record that includes employer name, address and telephone number, a calculation of gross wages, itemization of payroll tax and other deductions if applicable, and the net paycheck amount. This is legally required in New York and California.

9. Avoid Unauthorized Deductions from Paychecks

An employer can only legally deduct from an employee's earned pay the amounts required or authorized by law (such as Social Security, Medicare, income tax deductions, and court-ordered garnished amounts) as well as deductions authorized by the employee (such as deductions for insurance premiums and loan payments).

Examples: A household employer cannot deduct amounts from a nanny or household employee's pay to cover damages to household property. The employer cannot withhold a final paycheck as a way of collecting an amount the individual owes on a loan previously obtained from the employer -- unless the employee has given authorization in advance.

Best Practice: If you are going to deduct anything from an employee's paycheck that is not a tax, get the employee's authorization in writing up front.

10. Obtain Mandated Workers' Compensation Insurance

[Workers Compensation insurance](#) protects the domestic employee and the employer from the expenses and liabilities associated with a work-related accident.

Many states require household employers to carry Workers Compensation insurance for their employees. Domestic employers should discuss their requirement for this insurance with their Property/Casualty agent. Even where not legally required, obtaining a Workers Compensation policy is a best practice. HWS can facilitate your workers compensation insurance coverage via our partner broker – contact us for details.

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