



Ten Tips:

## Common Household Payroll & Legal Mistakes

### 1. Failing to classify most household staff as non-exempt employees

Housekeepers, nannies, and even many house managers are not viewed as professional/management staff and cannot be paid a straight salary for any number of work hours. [Nannies and most household staff must be paid on an hourly basis, and all household employees who do not live with their employer must be paid overtime.](#) A number of states extend overtime requirements to live in domestics - be sure you know your local rules and regulations.

Salaried employees (exempt) must have a regular base pay that they can count on receiving all year, should regularly supervise two or more employees, have management as the primary duty of the position, and have some genuine input into the job status of other employees (such as hiring, firing, promotions, or assignments). This exemption is for relatively high-level employees whose main job is to "keep the business running." ([FLSA DEFINITIONS](#))

### 2. Failing to calculate overtime pay correctly

[Hourly employees who do not live with the employer must be paid 1.5 times their hourly rate for hours worked in excess of 40 in a week under Federal law.](#) State regulations often are more comprehensive – California for example mandates daily overtime. Know the rules that apply to you.

### 3. Misclassifying household employees as independent contractors

Household staff – including nannies, housekeepers, and senior caregivers, are employees. According to the US Department of Labor's Wage and Hour Division [WHD], the "misclassification of employees as independent contractors is an alarming trend."

Often, the WHD adds, "workers are deprived of overtime and minimum wages, forced to pay taxes that their employers are legally obligated to pay and left with no recourse if they are injured or discriminated against in the workplace."

When the WHD finds cases of misclassification, it may refer the cases to state agencies and the IRS. [Nannies and other household employees ARE NOT independent contractors](#) and employers who incorrectly treat them as such do so at considerable peril.

### 4. Docking "meal breaks", failing to pay for all hours worked

Most nannies, and many household employees, work without meal breaks or rest periods, and employers are required to pay for the time. If the household employee is not free to leave the premises on meal and rest periods, they must be paid. And when the extra time results in an employee putting in more than 40 hours in a workweek, the employer also owes overtime pay.

*"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

## 5. Failing to pay for on-call time

If a family engages an employee to wait to be put to work, the individual must be paid for the on-call time. Nannies, when required to be available during hours a child is in pre-school or in an organized activity such as a sports practice session, are considered on-call. Similarly, a housekeeper engaged to be available to greet guest or vendors such as caterers or florists would be considered on-call.

## 6. Failing to abide by state and local laws

States and some locales may have their own version of federal wage and hour rules that are more comprehensive than Federal law. Employers need to be aware of and comply with the laws in the states where they have employees.

## 7. Failing to keep required records

Federal law requires employers to keep accurate and contemporaneous time tracking records. So, if there is a dispute with an employee about hours and pay 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 some smart phone apps that utilize GPS technology to facilitate nanny time tracking. These 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. Failing to 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. A single accident can leave the employer liable for thousands of dollars in medical bills. Don't assume that this liability is covered under your Homeowner's Insurance Policy!

Many states require household employers to carry Workers Compensation insurance for their employees. HomeWork Solutions' insurance partner will help clients obtain this insurance at competitive rates.

Typically this insurance is available through commercial insurers. State insurance pools exist for those employers unable to obtain commercial coverage. Domestic employers should discuss their requirement for this insurance with their Property/Casualty agent. You may also need to update your automobile insurance if your domestic drives your personal vehicle.

## 9. Substituting comp time for overtime pay

Under federal law, compensatory time off or comp time in place of receiving overtime pay is generally only legal for government employees. Federal law generally requires that employees get paid overtime for all hours worked over 40 in the 7 day workweek established by the employer. (Note: Some states such as California require daily overtime pay.)

## 10. Taking 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).

**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.

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