



Ten Tips:

Privately Employing Senior Caregivers

1. Employer Taxes & the HomeCare Worker

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

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 aide, companion, housekeeper, cleaning lady (individual), maid, cook, personal assistant, household manager, caretaker, butler, valet, and driver. We provide more information about [distinguishing a household employee from an independent contractor here](#).

2. Your HomeCare Worker's Taxes

Your household employee contributes to or pays:

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

3. Defining an Hourly Rate

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 Defined

Companionship services are NOT covered by the FLSA's minimum wage and overtime rules. "Companionship services" means services for the care, fellowship, and protection of persons who because of advanced age or physical or mental infirmity cannot care for themselves. Personal care services assistance with toileting, bathing, dressing, meal preparation and eating and other similar personal services may be provide as long as the time spent on personal care services does not exceed 20 percent of the total weekly hours worked by the companion. *Where this 20 percent limitation is exceeded, the employee must be paid for all hours in compliance with the minimum wage and overtime requirements of the FLSA.* Companions perform no housekeeping services.

Please note, eleven states have minimum wage and overtime laws that override the Federal companionship services exemption – know your local laws!

"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. Hours Worked Defined

Hours worked include all hours on duty, including meal time if the employee is required to remain at the premises during meals. The FLSA allows up to 8 hours of "sleep time" to be uncompensated for overnight care that is BOTH contiguous with a scheduled work day AND truly affords the caregiver 8 hours of uninterrupted sleep.

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 generally requires that non-exempt employees get paid overtime for all hours worked over 40 in a seven-day workweek established as by the employer. (Note: Some states such as California require overtime pay for hours worked over eight in a day.)

7. Record Keeping Requirements

Federal law requires employers to 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. There are smartphone apps approved by the US Department of Labor 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. California is considering similar legislation.

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 nanny 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.

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