

## Ten Tips: Employment Rights of a Nanny

Labor law, tax law, and the penal code, both at a Federal and state levels, provide basic workplace protections and rights to all nannies and domestic workers. It does not matter if you are a US citizen, an alien with a work permit, or an alien who does not have the legal right to work in the United States - these laws cover everyone.

► Nannies, housekeepers, and maids are typically the employee of the family retaining their services.

### 1. Pay for all hours worked.

The nanny or domestic is protected by the Federal Fair Labor Standards Act (FLSA). Nannies and domestics are to be paid on an hourly basis and must be paid for all hours worked.

### 2. Minimum Wage.

The Federal government establishes a national minimum wage (\$7.25 per hour as of 7/24/2009). ► Many states have established minimum wages that exceed the Federal minimum. The nanny or other domestic is entitled to be paid no less than the greater of the state or Federal minimum, with some narrow exemptions for companionship services for the elderly.

### 3. Overtime Pay.

A nanny or domestic who does not live with the employer is entitled to be paid an overtime differential for hours worked in excess of 40 in a week. The overtime differential is calculated as 1.5 times the regular hourly rate. California, Hawaii, Maryland and New York extend the overtime differential to nannies and domestics who live with the employer under varying rules.

### 4. Annual Wage and Tax Statements (Form W-2).

The nanny or domestic employer has obligations for wage and payroll tax reporting established by Federal Law. ► IRS Publication 926 details these requirements. A nanny is NOT an independent contractor and is NOT to be provided a Form 1099 *unless* wages do not meet \$2700 (2024) in the year.

► What to do if you do not get Form W-2 from your employer.  
► Historical Wage Test Values

### 5. Proper Payroll Deductions.

Your employer may make certain tax deductions from your regular paycheck. You can (and should) ask them to provide you the tax deduction breakdown. If you are paid the same amount each week, they only need to give this too you once.

#### Proper Payroll Deductions

7.65% for Social Security & Medicare Income Tax (by agreement)  
State Authorized Miscellaneous Taxes (CA, NJ, NY, PA, RI)  
Other deductions such as health insurance premiums or retirement contributions that both benefit you and that you *agree to in writing*.

#### Improper Payroll Deductions

Employer may not deduct the Employer share of Social Security & Medicare  
Employer Unemployment Insurance Tax  
Deductions for Breakage or Damages to Household Items  
Travel Expenses for Work Related Travel

## 6. Regular Payroll Payments.

State law determines the maximum number of days between payroll dates and the maximum delay an employer may place on your periodic payroll. A best practice is to agree to a payroll frequency (weekly, bi-weekly typically) and a pay date in writing. Employers may not place additional delays (lag periods) on your payroll due to employer's business travel, vacation, etc. The employer is responsible to maintain accurate and contemporaneous payroll records that include the dates and hours you worked for a period of 3 years. It is advised that the nanny or domestic also maintain similar work records that are kept in a safe place.

## 7. Payment of medical bills and lost wages due to a work-related injury.

This is known as ► Workers Compensation, and the rules surrounding who must have a policy of insurance and the covered items is established by individual state insurance commissions. In most cases, you *must* file a claim with your state's Workers Compensation Board to qualify for payments for medical expenses and compensation for lost wages. If you are injured at work, and your employer (or the employer's insurance company) will not pay these expenses, you should seek legal advice.

## 8. A Workplace Free from Physical and/or Sexual Abuse.

It is illegal for an employer to physically abuse (slapping, beating, etc) a worker. It is illegal for the employer to demand physical contact or demand sex from the nanny or domestic worker. There are both Federal and state laws that protect workers from this type of abuse.

***TIP! Consult a lawyer or legal aid society if you have been physically or sexually abused by your employer.***

## 9. Document Retention.

Your employer may not keep identity documents such as your passport, Social Security Card, Driver's License, or Work Permit from you. You have a right to a copy of any ► work agreement or contract that you sign with your employer. The employer is responsible to maintain accurate and contemporaneous payroll records that includes the dates and hours you worked for a period of 3 years. It is advised that the nanny or domestic also maintain similar work records and keep these records and your signed work agreement in a safe place.

## 10. Non-retaliation.

Your employer may not turn you in for immigration violation as retaliation for a workplace grievance such as a formal claim for unpaid wages, a complaint of criminal misconduct such as physical abuse, or a claim for workers compensation benefits. The Department of Homeland Security's Immigration & Customs Enforcement Agency (ICE) has written rules that prohibit their interference in these matters. See ► ICE's Policy for Labor Disputes courtesy of the ► National Employment Law Project (NELP) publication "Rights Begin At Home"

Taking the time at the beginning of the employment relationship to define all aspects of the employment relationship in a written work agreement benefits both the employer and employee, and serves as a blue print that helps document the employer's specific requirements and expectations as well as the financial agreements made with the nanny or domestic. Additionally, by addressing all 'issues' up front, the employer avoids misunderstandings, assumptions, disappointment and conflict in the future. Experts agree - a good nanny-family work agreement is an important foundation for the good relationship you hope to have with this person.