



# 8

## **Determining Wages and Scheduling Hours**

**W**age and hour concerns are complicated; therefore, they create a lot of uncertainty within households that employ help. Through the job description and work agreement, wages and hours should be clearly defined and agreed on by both employer and caregiver. To even begin the interviewing process, employers should define a specific work schedule for the caregiver, as well as a policy for when work is required or performed beyond the specified regular workday. In addition, before beginning employment, wages should be negotiated and agreed on, and pay schedules should be clearly established. However, there is much more involved with wages and hours in the law. Employers must be aware of their legal requirements on federal, state, and local levels in order to lawfully hire and employ a caregiver in the home.

Uncertainty stems from the fact that there are many laws, as well as misinformation and anecdotal recommendations from friends and advisers who are not experts in household employment. In wage and hour issues, the problem exists of not knowing what the requirements are—and there is much to know and manage. This chapter discusses why employers must pay an employee according to the law, and provides information on how to properly plan for and manage wages and hours. With the following information, employers will be more informed—and more comfortable—with legal wage and hour requirements.

## Gross Pay vs. Net Pay Payment Methods

It is extremely important that, from the beginning, all discussions about wages between the household employer and the caregiver clearly state whether the wage will be gross pay (before taxes) or net pay (after taxes). Many employees who work in the home are not aware of the tax deductions that are necessary for them to be legal and may have worked before off the books by receiving only cash when paid for their work. From the employer perspective, an employer just wants to know the total cost of hiring an employee. For the caregiver, they want to know what money they will be taking home at the end of the week. Because of the nature of the household employment industry and the history of so many employers hiring illegally and paying illegally, a minority of domestic workers are interested in the benefits of being paid according to the law. In some circles and among the more professional household employees, this is changing. And as more famous examples of exposure are publicized, employers are more aware of the risks involved in not paying an employee legally.

Employers do have a greater risk when using net calculations to pay caregivers as the employer is responsible for all taxes. Also, the tax amounts can change with tax law changes or if the caregiver chooses to increase or decrease his or her withholdings.

### FACTS AND FIGURES

*Note: the following example used below includes the calculations: filing as a single person from Massachusetts, with zero allowances and zero deductions.*

#### Scenario 1: Talking in gross pay terms

When gross pay is agreed to, the necessary withholding taxes (Social Security, Medicare, federal income tax, and state income tax—for example Massachusetts) will be deducted from this gross wage. The remaining amount is the net that is paid to the employee. So, if the gross pay is \$500, the employer would pay the employee \$500 of gross, less the deductions from tax (approximately \$121.20 a week).

This would result in the caregiver's take home, or *net* pay, as being \$378.80.

The employer then has to remember that there are additional employer taxes to be paid on top of the *gross* pay of \$500 (federal and state unemployment, matching Social Security, and Medicare), which calculates to about \$50.60. When this is combined with the gross \$500, the total employer responsibility is \$550.60, in order to pay the employee \$378.80 a week.

### Scenario 2: Talking in net pay terms

Net calculations begin with an agreed-on net or take-home pay, which then has to be "grossed up" by the employee's Social Security, Medicare, withholding taxes, and other mandatory deductions. For example, using a net calculation of \$500 agreed on by employer and employee would mean that the caregiver would take home \$500. When this is grossed up by the employee's taxes, there is a gross payment of \$668.00 (using Massachusetts again for an example of state taxes).

For the employer, there are then the employer taxes on top of that \$668.00 (federal unemployment tax, Social Security, Medicare, and state unemployment—MA here), which add up to \$67.60. This has to be added on to the gross wage of \$668.00 to give a total employer responsibility of \$735.60.

Scenario 1 with a gross pay of \$500 creates an employer's total responsibility of \$550.60 per week.

Scenario 2 with a net pay salary of \$500, creates an employer's responsibility of \$735.60 per week.

An employer who does not understand the difference between gross pay and net pay can potentially find him- or herself in a situation where he or she is paying an additional \$185.00 per week. Therefore, it is important to know the differences prior to negotiating your compensation with your caregiver.

*Note: Calculations estimated from tax rates as of 2017. Exact calculations may have changed from time of print. Up-to-date figures can be calculated using GTM's Tax Calculator at [www.gtm.com](http://www.gtm.com).*

## Hourly Wages vs. Salary

Deciding to pay an employee an hourly wage or a salary is another key element of household employment. Generally, most caregivers are paid an hourly wage, especially those who work part-time. This allows for more accurate record keeping which is mandatory according to the *Fair Labor Standards Act* (FLSA) for hourly workers. This is especially true because, according to the FLSA and many state's labor standards, household employees are classified as nonexempt to overtime laws and therefore must be paid on an hourly wage basis and be paid overtime. However, salaries are sometimes appropriate for long-term employees who work full-time and who generally have managerial or supervisory responsibilities.

A caregiver paid an hourly wage is based on the actual hours he or she has worked in a given payroll cycle. In contrast, a salary employee is paid based on an agreed annual salary amount, divided by the number of payroll cycles in a calendar year. The most common payroll cycles are the following:

- weekly, for 52 cycles for the year
- weekly-lag, which lags your payroll by one week, for 52 cycles in the year
- biweekly, for 26 cycles in a year
- semimonthly, for 24 cycles
- monthly, for 12 cycles per year

For example, employer and employee agree to an hourly wage of \$12.50. To compute the compensation, you would multiply the hours (40) times the rate of \$12.50 to come up with a \$500 weekly rate. For a salaried employee, you would take the annual salary (e.g., \$26,000) and divide by 52 pay frequencies to come up with a \$500 weekly salary. Once the agreed-on compensation

has been discussed, the employer should always communicate in writing an hourly compensation to the caregiver, keep proper time cards and document the hours worked on the employee's pay stub each pay cycle.

## Fair Labor Standards Act

The U.S. *Fair Labor Standards Act* (FLSA) establishes minimum wage, overtime pay, record-keeping, and child labor laws affecting full- and part-time workers. Under FLSA's individual coverage provision, domestic service workers—caregivers, housekeepers, nannies, cooks, chauffeurs, and so on—are covered if their cash wages from one employer are at least \$2,000 (2017) per calendar year.

The Department of Labor (DOL) has very strict wage and hour requirements of the federal FLSA as it applies to most home care workers. According to the DOL, the FLSA requires employers (including household employers) to pay employees at least the minimum wage (set by the federal government at \$7.25 per hour for 2017) and overtime pay of one and a half times the employee's regular rate of pay. (See the table in this chapter on minimum wage rates per state, which could be higher than the federal minimum wage.)

## Overtime

Overtime pay must be paid for hours worked over 40 hours of work in a work week—with some exceptions. (See the box below on what the FLSA does not require.) Overtime wages (as required by FLSA) are due on the regular payday for the pay period covered. Household employers with staff living *outside* the workplace (live-out domestic workers or non-residential care) must comply with the FLSA labor law and abide by minimum wage and overtime rules. However, *live-in* domestic workers (or residential caregivers) as defined by FLSA, not employed by a third party, are *exempt* from the FLSA's overtime pay requirement, although they must be paid at least the applicable minimum wage for all hours worked. However, some state and local laws for overtime vary, and may supersede the federal FLSA's minimum wage and overtime requirements, whether or not employees reside in the household where they are employed. Some states, like California, New York, Maryland, Minnesota,

and New Jersey have laws that extend greater protection to live-in help, including overtime. (See “Overtime and State Differences.”)

## Home Care Final Rule

Following the publication of the *Home Care Final Rule (Application of the Fair Labor Standards Act to Domestic Service)* in 2013, many employers still have questions about the specific rules for paying home care workers legally (including those working in senior care). The Final Rule brings important minimum wage and overtime protection to the care workers caring for elderly individuals and people with disabilities, illnesses, and injuries in their homes.

The DOL defines a home care worker as someone who provides certain types of services in private homes. The DOL labels these services as fellowship and protection (keeping company, playing games, hobbies), personal care (dressing, bathing, cooking, cleaning, etc.), and/or health-related services (injections, tube feeding, other medical-related activities). Home care workers can be live-in or live-out. A home care worker’s job title may be something like home health aide, personal care attendant, certified nursing assistant (CNA), senior care provider, or caregiver. It’s important to note that health-related or personal services that are provided in a group home, nursing home, residential care facility, or hospital are *not* home care services.

It is important to understand that the Final Rule limits household work to that benefitting the elderly person or person with an illness, injury, or disability. Household work that primarily benefits other members of the household, such as making dinner for another household member or doing laundry for everyone in the household, results in the loss of the companionship exemption. Thus, the employee would then be entitled to minimum wage and overtime pay for that workweek.

The final rule also clarifies that direct care workers who perform medical-related services for which training is typically a prerequisite are not companionship workers and, therefore, entitled to minimum wage and overtime.

The Final Rule revised the definition of *companionship services* to clarify which duties are covered under this term and prohibited agencies from claiming companionship and live-in exemptions, thus enabling more domestic employees to be protected by FLSA’s overtime and minimum wage requirements. According to the rule, companionship services are **fellowship**

with and **protection** for an elderly person or person with an illness, injury, or disability who requires assistance in caring for him- or herself. According to the rule:

- fellowship means to engage the person in social, physical, and mental activities, such as conversation, reading, games, and crafts, and accompanying the person on walks, on errands, to appointments, and to social events
- protection means to be present with the person in his or her home, or to accompany the person when outside of the home, and to monitor the person's safety and well-being
- care services mean assisting the person with: ADLs, such as dressing, grooming, feeding, bathing, toileting, and transferring; and Instrumental Activities of Daily Living (IADLs), which are tasks that enable a person to live independently at home, such as meal preparation, driving, light housework, managing finances, assistance with physically taking medications, and arranging medical care

## The Companionship Services Exemption

There are limited circumstances in which household employers are *not* subject to the FLSA requirements of paying a home care worker federal minimum wage and overtime pay (home care workers employed by an agency or other outside party are required to be paid minimum wage and overtime by that employer). The companionship services exemption occurs (and can be claimed) only if any of the following instances occur.

- The home care worker spends less than 20 percent of his or her time per week providing personal grooming services like cleaning, bathing, cooking, cleaning, etc. Therefore, if the employee spends *more* than 20 percent of the workweek performing these services, in such workweeks, he or she *is* entitled to minimum wage and overtime pay.
- No medical services are performed by the home care worker. Therefore, if the employee does perform medical services, then he or she is entitled to minimum wage and overtime pay.

- No housework is performed for the benefit of the whole family or household, such as preparing meals for the family or doing other household members' laundry. The only housework done is for the person for whom the home care worker was hired. Therefore, if he or she does perform housework for the entire household/family, then he or she is entitled to minimum wage and overtime pay in such workweeks when this is done.

## Live In or Live-Out Overtime Rules

The rule stipulates that live-in domestic service employees who live in the employer's home—whether permanently or for an extended period—are exempt from overtime pay but must be paid at least the federal minimum wage for all hours worked. It is important for a household employer to list in the work agreement what time is or not paid time, such as meal-, break-, and sleeptime, and to specify what is considered work time and thus payable in cases when such "free" time is interrupted by a call to assist with the senior. Employers must maintain accurate records of hours worked by a live-in caregiver. Under the FLSA Final Rule, a live-in household employee:

- lives, works, and sleeps on the employer's premises seven days/week and has no home of his/her own other than what the household employer provides
- lives, works, and sleeps on the employer's premises for five days/week, 120 hours or more, OR spends less than 120 hours/week working and sleeping on the employer's premises BUT spends five consecutive days or nights residing on the premises

## Overtime and State Differences

Finally, it is important to note that some states impose their own requirements, which may differ from federal law and be more stringent. For example:

**California** differentiates between "personal attendants" (most senior care providers) and other domestic workers. Personal attendants (either live-in or live-out, full-time or part-time) whose duties require mostly caretaking (i.e. not personal housekeeping, for example), have been awarded



overtime rights as of 2013 (Domestic Worker Bill of Rights, AB 241), where they are required one and a half times the regular rate of pay for work over nine hours in a day, or over 45 hours in a week. Live-out domestic employees who are not personal attendants (cooks, gardeners, maids, chauffeurs, companions, housekeepers, valets, and so on) are entitled to one and a half times the regular rate of pay for over eight hours in a day or 40 hours in a week and for the first eight hours on the seventh consecutive day of the workweek. These employees are also entitled to double time (two times the regular rate) for hours worked over 12 in a day and hours worked over eight on the seventh consecutive day of the workweek. Live-in domestic workers who are not personal attendants have more stipulations. As of September 2016, the overtime protection for domestic workers in California has been made permanent and has removed the former sunset provision (SB 1015 was written in to law to continue the success from AB 241, 2013, which granted overtime protections to California's privately hired domestic workers).

In **Massachusetts**, the laws for live-out and live-in are the same and domestic workers must be paid overtime (one and a half times the regular pay rate) for hours worked more than 40 in a given workweek.

In **New York**, live-out employees must be paid overtime (one and a half times the regular pay rate) for hours worked more than 40 in a workweek, and live-in employees in New York must be paid overtime for hours worked more than 44.

In **Texas**, live-out employees must be paid overtime for hours (one and a half times the regular pay rate) worked more than 40 in a workweek, and live-in employees are required to be paid overtime for hours in excess of 40 per week, but it can be at their regular rate of pay.

It is therefore wise to contact your state department of labor for your state's specific laws.

A household employer should specify in the work agreement when approved overtime can occur and what the specific rate of pay will be. There should also be specific details about whether overtime will be paid on week-ends and holidays (and if so, which holidays). This will avoid any conflict when the issue arises and ensure that both employer and employee are on the same page. The employer should also keep track of all the hours worked by the caregiver and pay accordingly.

### **FACTS AND FIGURES**

#### **OVERTIME EXAMPLE**

Jenny, a live-out caregiver, works 55 hours per week for an 80-year-old lady with severe arthritis, and is paid a standard \$700 a week.

To be overtime compliant, the suggested hourly rate Jenny should be paid = \$11.20.

First 40 hours should be at standard rate of \$11.20 = \$448.00.

Extra 15 hours of overtime at 1.5 x standard rate of \$11.20 (\$16.80) = \$252.00.

So first 40 hours of \$448.00 + extra 15 hours overtime of \$252.00 = \$700 in wages for the week.

### **FACTS AND FIGURES**

#### **CHECKLIST OF PAYING HOME CARE WORKERS UNDER THE FINAL RULE**

**If you hired a live-out caregiver directly, make sure you:**

- pay at least minimum wage for all hours worked up to 40 hours each week
- pay 1.5 times the wage rate for any hours worked over 40 in one week
- keep a record of hours worked and basic employment records

**If you hired a live-in caregiver directly, make sure you:**

- pay at least minimum wage for all hours worked up to 40 hours each week
- keep a record of hours worked and basic employment records
- consider creating a clear agreement about work and sleep schedules, break times, time off, etc.

**If you hired a caregiver through a placement or an employment agency or nonprofit organization:**

- make sure the worker is receiving at least minimum wage and overtime pay, if they are live-out
- check with the agency to ensure they are paying the worker accurately and keeping a record of hours worked
- make sure the agency can provide access to the worker's employment records

**If you hired a caregiver through a self-directed program funded by Medicaid:**

- you are responsible for ensuring the worker is paid at least minimum wage and receives overtime pay, unless they are a live-in worker
- make sure the worker is paid accurately and all hours worked are recorded
- make sure you keep accurate employment records

For more information, download the DOL's Paying Minimum Wage and Overtime to Home Care Workers guide at [www.dol.gov/whd/homecare/homecare\\_guide.htm](http://www.dol.gov/whd/homecare/homecare_guide.htm), or see [www.dol.gov/whd/regs/compliance/whdfsfinalrule.htm](http://www.dol.gov/whd/regs/compliance/whdfsfinalrule.htm).

## **FACTS AND FIGURES**

### **NOT REQUIRED UNDER FLSA**

FLSA does not require (but please be advised that some local laws may require):

- vacation, holiday, severance, or sick pay
- meal or rest periods, holidays off, or vacations
- premium pay for weekend or holiday work
- pay raises or fringe benefits
- discharge notice, reason for discharge, or immediate payment of final wages to terminated employees

*Source: U.S. Department of Labor, "Handy Reference Guide to the Fair Labor Standards Act," revised 2014.*

## **FLSA Record Keeping**

According to the law, employers are required to keep records on wages, hours, and other items as specified by DOL record-keeping regulations. Records to be kept for minimum wage and overtime pay include the following:

1. employee's full name and Social Security number
2. address, including zip code
3. birth date, if younger than age 19
4. sex and occupation
5. time and day of week when employee's workweek begins
6. hours worked each day
7. total hours worked each workweek
8. basis on which employee's wages are paid (e.g., "\$9 per hour," "\$440 a week," "piecework")
9. regular hourly pay rate
10. total daily or weekly straight-time earnings
11. total overtime earnings for the workweek

- 12. all additions to, or deductions from, the employee’s wages
- 13. total wages paid each pay period
- 14. date of payment and the pay period covered by the payment

For more on FLSA, go to [www.dol.gov](http://www.dol.gov) or call the wage hour toll-free information and help line at 1-866-4USWAGE (1-866-487-9243).

As a rule of thumb, the records should be retained for at least three years, but it is advised that seven years is better.

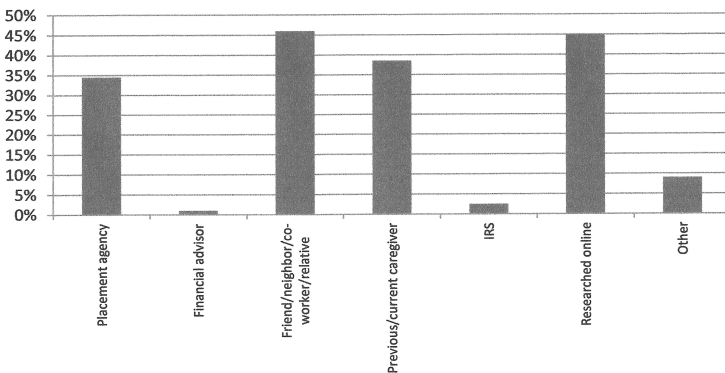
Employers subject to the FLSA’s minimum wage requirements must post (and keep posted) in the workplace the federal minimum wage rate. Posters can be easily downloaded at [www.dol.gov](http://www.dol.gov) or obtained at state labor departments.

Also, the FLSA does not limit the number of hours in a day or days in a week an employee may be required or scheduled to work, including overtime hours, if the employee is at least 16 years old. These issues are to be agreed on by the employer and the caregiver.

In addition, many states set their own minimum wage and overtime pay laws. Employers need to ensure that they comply with the laws set in their locality. State labor departments can provide more information to employers on state and local requirements.

### FACTS AND FIGURES

#### WHERE EMPLOYERS LEARN ABOUT SALARY AND BENEFITS



Source: GTM Household Employer Employment Trends 2016

## Salaries and Minimum Wage

Salaries vary greatly in the household employment industry—just as household jobs and workplaces differ. The household position is often customized to meet the needs of one particular senior, and salaries reflect that fact. No standard salaries exist within the household employment industry other than the federal minimum wage requirements. The minimum wage in the United States is \$7.25 per hour (2017), unless the state in which the caregiver works mandates that it is higher. (The U.S. Congress has been considering raising the minimum wage. To ensure that you know the current minimum wage rate, go to [www.dol.gov](http://www.dol.gov).)

A Philadelphia agency owner said she believes that an employee’s salary and compensation package should reflect her or his background and experience: “As in any industry, an individual who brings more to the job by way of a broader and deeper experience will be compensated accordingly.”

A GTM partner agency owner added that she has little to offer families that want to underpay employees. When it comes to household employee pay, she lives by the maxim “you get what you pay for...Salary is not a place to cut corners.”

### FACTS AND FIGURES MINIMUM WAGE PER STATE IN 2017

State	Rate (per hour)
Federal	\$7.25
Alabama	no state minimum; \$7.25 for Federal
Alaska	\$9.80
Arizona	\$10.00
Arkansas	\$8.50
California	\$10.50 for large employers, \$10.00 for small employers
Colorado	\$9.30

Connecticut	\$10.10
Delaware	\$8.25
District of Columbia	\$12.50
Florida	\$8.10
Georgia	\$7.25
Hawaii	\$9.25
Idaho	\$7.25
Illinois	\$8.25
Indiana	\$7.25
Iowa	\$7.25
Kansas	\$7.25
Kentucky	\$7.25
Louisiana	no state minimum; \$7.25 for Federal
Maine	\$9.00
Maryland	\$9.25
Massachusetts	\$11.00
Michigan	\$8.90
Minnesota	\$9.00
Mississippi	no state minimum; \$7.25 for Federal
Missouri	\$7.70
Montana	\$8.15
Nebraska	\$9.00
Nevada	\$8.25 with no health insurance benefits provided by employer/\$7.25 with health insurance
New Hampshire	\$7.25

New Jersey	\$8.44
New Mexico	\$7.50
New York	\$9.70 (New York City is \$11.00 for large employers and \$10.50 for small employers. Long Island and Westchester Counties are \$10.00)
North Carolina	\$7.25
North Dakota	\$7.25
Ohio	\$8.15
Oklahoma	\$7.25
Oregon	\$10.25
Pennsylvania	\$7.25
Rhode Island	\$9.60
South Carolina	no state minimum; \$7.25 for Federal
South Dakota	\$8.65
Tennessee	no state minimum; \$7.25 for Federal
Texas	\$7.25
Utah	\$7.25
Vermont	\$10.00
Virginia	\$7.25
Washington	\$11.00
West Virginia	\$8.75
Wisconsin	\$7.25
Wyoming	\$7.25

*Note: Minimum Wage is subject to change; please refer to [www.dol.gov/whd/minwage/america.htm](http://www.dol.gov/whd/minwage/america.htm) for the most recent information.*

*Source: [www.dol.gov](http://www.dol.gov), 2017*



## FACTS AND FIGURES

### THE CRIME OF WAGE THEFT

While household employees are often excluded from federal and state laws protecting against wage theft and overtime pay because of the limited number of employees within the home/business, a growing number of states are addressing the crime of wage theft by some employers—employers who pay workers below minimum wage or do not pay overtime, resulting in overworked, underpaid employees. Many (but not all) of these employees tend to be immigrants who come to the United States desperate for any work, and who therefore accept what's on offer—even if the job entails an infringement of worker's rights and federal and state law.

According to a 2013 briefing report, “Low Wages and Scant Benefits Leave Many In-home Workers Unable to Make Ends Meet,” by Heidi Shierholz, in-home workers, such as senior care workers, housekeepers, and nannies, often receive such low wages that they are living below twice the poverty threshold. While the household employer must ensure his or her employee receives at least the minimum wage and other protections such as overtime pay, meal breaks, etc., domestic worker organizations are calling for action at the federal and state level as many employers are in violation of this.

According to the briefing report, in-home workers have a higher incidence of poverty than workers in other occupations.

- Nearly one quarter—23.4 percent—of in-home workers live below the official poverty line, compared with 6.5 percent of workers in other occupations.
- More than half—51.4 percent—of in-home workers live below twice the poverty line, compared with 20.8 percent of workers in other occupations. (Researchers commonly use twice the official poverty threshold as a measure of what it takes a family to make ends meet.)

In addition: in-home workers' hourly wages are nearly 25 percent lower than those of similar workers in other occupations (after accounting for demographic differences) and in-home workers'

median weekly pay is 36.5 percent lower for in-home workers than similar workers in other occupations.

According to the report, in-home work is expected to grow 53.2 percent from 2010-2020, compared with 14.3 percent for other occupations. All federal and state laws and efforts to protect domestic workers will add to the occupation's growth. Some states have enacted Domestic Workers' Bill of Rights laws that help with this protection. And, in mid-2016, the federal government updated the DOL's final rule regulating overtime. According to the DOL, the updated final rule automatically extended overtime protections to more than four million workers within its first year of implementation.

The 2012 report, "Home Economics: The Invisible and Unregulated World of Domestic Work," also documents "serious and widespread" mistreatment of domestic workers in the United States. Generally domestic workers, said the report, "are underpaid, in many cases less than the minimum wage, and often at levels too low to adequately care for their own families...Employed in private homes, behind closed doors, domestic workers endure long hours and sub-standard pay. There is little economic mobility and almost no financial security..."

## Examples of State Wage Theft Prevention Laws

A number of states protect workers with wage theft prevention laws. Wage theft prevention laws mandate that employers provide workers with written, detailed information on how much and when a worker is paid. These employer pay notices must generally be provided upon hire and when there is a change to the information provided.

**New York State.** The New York State Wage Theft Prevention Act (WTPA), 2011, to guard against employer wage theft. At the time of hire, all New York employers must provide all employees with written pay notices that include:

- the employee's rate or rates of pay
- the overtime rate of pay, if the employee is nonexempt

- the basis of wage payment (e.g., per hour, per shift, per week, piece rate, commission, etc.)
- the allowances to be claimed against the minimum wage (e.g., tip, meal and lodging allowances)
- the regular pay day
- detailed employer information

The law also requires that these notices be:

- provided to the employee both in English and in the employee's primary language (if DOL offers a translation)
- signed and dated by the employee
- maintained for six years

An employer who fails to provide the required notice within ten days of hire, could have action brought against him or her and have to recover \$50 per day per employee up to \$5,000/employee unless the employer paid the employee all wages required by law.

The WTPA also increases the amount of wages that can be recovered as damages for nonpayment over and above lost wages—from 25 percent to 100 percent, and allows greater protection for workers who speak up against exploitative employers. The criminal penalties for wage violations are now far greater: up to a year in prison and a \$5,000 fine.

In early 2015, the law was amended to extend protections, including stiffer penalties for retaliating against employee complaints, and more DOL enforcement power, including allowing DOL to order the employer or acting person to pay liquidated damages and payment up to \$20,000, as well as order the employer to reinstate the employee's job.

**California.** California's Wage Theft Prevention Law became effective in 2012 and mandated that employers provide each nonexempt employee with a written notice containing specified information at the time of hire. In 2015, the law was updated to include California's Paid Sick Leave, which mandates all employees working 30 days or more within a year of beginning employment be entitled to one hour of paid sick time for every 30 hours worked.

**Washington, D.C.** Effective in 2015, D.C.'s law requires employers to provide employees with: the rate and basis (hour, shift, week, etc.) of pay,

including tip, meal or lodging allowances; overtime pay and overtime exemptions; the living wage and exemptions; applicable prevailing wages; the employee’s regular pay day; and other pertinent information about the employer (e.g. name, address, phone number). This wage notice must be in writing, signed and dated by both the employer and employee, and provided upon hire and when any information changes.

## **Penalties**

Employers not following laws and regulations could find themselves facing penalties and even jail time. If you owe money to the Federal Government, a delay in filing may result in an IRS failure to file penalty as well as interest charges. The longer you wait to file your return, the more money you are going to be charged in penalties—the amount you owe could increase as much as 25 percent if you continue to delay. State tax penalties can be just as harsh as those imposed by the IRS. The worst case scenario, the state can prosecute you for a crime if it believes your failure to file tax returns was due to a fraudulent scheme. This could result in jail time. Usually, the result of not filing state returns is a penalty, interest, and other fees, added to the amount of tax due. But beware: some states can even put liens on your property, seize your assets, garnish wages, and intercept a federal tax refund if you wait too long before filing or paying your owed taxes.

## CASE STUDY



JUDI MERLIN  
EXPERIENCED AGENCY PRESIDENT  
KIM CINO  
EXECUTIVE DIRECTOR  
A FRIEND OF THE FAMILY  
SMYRNA, GA, AND CHARLOTTE, NC

A Friend of the Family, which places eldercare and childcare workers in Atlanta, Georgia, sees a trend in the industry: caregivers are raising their salary requirements.

“Some caregivers have not made accommodations regarding the present economic conditions and are not skilled in making cost-of-living adjustments,” said Judi Merlin, former president of the agency. “The caregiver salary is [generally] in a very good range, but we see cases where the caregiver inflates his or her worth for no other reason than he or she wants to. As an agency, we spend a lot of time educating those clients and caregivers [on how] to meet in the middle.”

The agency invests a lot of time educating clients on fair compensation at time of hire and as the relationship progresses. In fact, the agency’s staff will check in with recent placements about every four months to ensure fair wages are being paid for the number of hours worked.

According to Kim Cino, the agency’s executive director, a key aspect of the agency checking in with clients and household help several times a year is to determine if a new employer-employee contract needs to be drafted to reflect new circumstances and fair compensation.

Despite the trend of rising costs to employ in-home caregivers, Cino said many caregivers who have worked with families for a while—and older caregivers unsure of their current market worth—are unfairly compensated. She said one reason for this is that employers working with one employee for many years are not familiar with current compensation practices or other household employment services.

Ensuring that a caregiver is fairly compensated is one of the keys to retaining a caregiver. To combat the double threat of an employee feeling underpaid or being pursued by a recruiter, employers must make sure that their employees are paid for all hours worked, including overtime, and that their wages are in line with the market. A good way to assess the market value is to ask agencies and other employers, as well as to participate in annual industry salary surveys.

—Guy

## Time-Off Payments

Time-off payments for sick, personal, or vacation days should be agreed on by the employer and caregiver prior to hiring, and should be written in the household employment work agreement and employment handbook. Be certain to specify if time off may be taken in full- and half-day amounts, and when a doctor's note regarding sick time will be required.

Employers are typically mandated to provide time off for voting, jury duty, and military and National Guard training or active service.

## Debts Owed by Employee to Employer

Information about whether an employee may borrow money against future wages from the employer should be provided to the caregiver and included in the employee handbook. If such activity is permissible, then the employer should detail what needs to occur to necessitate an employer loan to the employee, what process an employee needs to follow to request an employer loan, and what steps will be taken to obtain payment of the loan. When considering granting a loan, the employer should take into account the length of time that is considered reasonable for the employee to repay the loan.

Employers should obtain a signed *promissory note* from the caregiver for any significant amount of money loaned (e.g., \$25 or more). This note should include the following:

- date of loan
- loan amount
- payment method (e.g., loan payments taken directly from paychecks; some states, such as New York and Connecticut, do not allow this. It is important to research your state laws before offering this option. The promissory note should be filed in the employee's personnel file, and a photocopy of the note should be provided to the caregiver.)
- payment schedule
- the employee's and the employer's signatures

## Q & A

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**Q.** If I employ a caregiver who is an immigrant—not a U.S. citizen—must I pay U.S. minimum wage?

**A.** Yes. Minimum wage, as well as federal and state labor laws, generally apply to domestic caregivers working in the United States or a U.S. possession or territory, regardless of employee citizenship or immigration status. You should also ensure that the worker is eligible to legally work in the United States, using Form I-9.

### Garnishment

The federal wage garnishment law limits the amount that may be legally *garnished* (withdrawn for payment to another, per legal direction, such as an ex-spouse for child care payments) from an individual's income, and protects an employee whose pay is garnished from being fired on account of owing a single debt. For the most part, these amounts cannot be more than 25 percent of an employee's disposable earnings. Both the employee and the employer receive copies of any garnishment. Specific guidelines will be listed on formal garnishment orders.

### Compensation

Before an employer hires a caregiver, the employee's compensation must be detailed fully, including vacation, mileage reimbursement, paid auto insurance, and so on. It is important to spell out what compensation a caregiver will be paid when he or she travels with the senior, or when he or she attends an off-site event as part of the workday.

Employees using their own cars for work tasks and work-related events should be reimbursed for mileage. The federal mileage reimbursement rate for 2017 is 53.5 cents per mile. It is useful to include a copy of an *Expense Report*, which includes a section on mileage in the employee handbook. (See Appendix E.)

While many employers defer to established federal rates, once again, employers need to be certain of what is required by their local laws. Some requirements are quite extensive. For instance, in New York State, the Department of Labor has set standard allowances for meals and lodging. According to New York State law, an employee's meal and lodging may be considered part of the minimum wage, but the employee must be provided with a written notification of any allowances claims of this kind.

## **Breaking Down the Paycheck**

Employers should always pay employees by check, so both parties have a record of the payment. Checks need to be *net*—total wages after all taxes and benefit option payments are withheld. Even if an employer directly deposits paychecks per a caregiver's request, a payment record or voucher should be supplied to the employee and kept on file for the employer to access if needed. (See Appendix D for a sample *Paycheck and Payroll Earnings Statement*.)

## **Taxes**

Every employer is responsible for several federal, state, and local taxes. A household employer is responsible for the timely payment or deposit of employment taxes withheld from an employee, his or her matching share of Social Security and Medicare (the Social Security and Medicare taxes are combined into what is known as FICA—the Federal Insurance Contribution Act), and all Federal Unemployment Tax Act (FUTA) taxes. (See Chapter 10, for more information on payroll and taxes.)



## FACTS AND FIGURES

### RECOMMENDED PAY-STUB INFORMATION

An employer should include the following information on an employee's pay stub:

- employer name and address
- employee name
- pay period start and end dates
- check date
- check number
- current payroll information
- gross earnings
- total deductions:
  - federal
  - Old Age Survivors Disability Insurance (OASDI) (e.g., Social Security)
  - Medicare
  - state withholding
  - local tax withholding
- net pay
- year-to-date payroll information
- sick time and vacation time accruals
- withholding allowances (according to withholding status)
- health reimbursement arrangement

*Note: some states may require more information on the pay stub so you should check with your state, or ask a payroll service like GTM Payroll Services ([www.gtm.com](http://www.gtm.com)). For example, New York State's Wage Theft Prevention Act (2011), asks that pay statements include many other details, such as, for non-exempt employees, employee's overtime pay rate, the number of regular and overtime hours that the employee worked, and the employer telephone number on the paycheck.*

# CASE STUDY



DENISE SHADE  
HOUSEHOLD EMPLOYER  
NEW YORK, NY

Denise Shade, senior vice president of Key Bank’s foreign exchange unit could easily be considered a financial whiz. Yet despite her obvious executive-level financial ability, Shade uses GTM’s services for household employment taxes and payroll.

“We first did our taxes and payroll on our own,” said Shade, “because we really wanted to understand it, but it is incredibly time-consuming on a weekly basis.”

Along with the standard time required to attend to payroll and taxes, Shade said that twice issues arose with the IRS, causing payments to be tracked. While Shade was able to submit to the IRS proof of payments, she explained that the time required for this is particularly lengthy. Noting that such issues arise from time to time, she added that using a payroll and tax service specializing in household employment was helpful in saving her from what could be stressful and painstaking record searches.

All employers, including household employers, must deal with the complexity of payroll and taxes, as well as the compounded legal requirements from federal, state, and local levels. Along with these concerns is the demand that employers are responsible for the timely payment or deposit of employment taxes. There are many things to learn and to consider, such as while deducting payroll taxes, an employer need only deduct the employee’s share of Social Security and Medicare taxes, and not the employer’s taxes. In addition, employers are, at times, questioned by the IRS or their state of residence, and need to submit necessary forms and records. Many household employers save themselves significant

time, worry, and effort by using a third-party payroll firm to provide tax and payroll services. By relying on a knowledgeable payroll service, household employers and their employees are protected and are eligible for assistance if needed.

—Guy

## FACTS AND FIGURES

### **DEPENDENT CARE ASSISTANCE PROGRAM (DCAP)— A TAX-SAVING TIP FOR HOUSEHOLD EMPLOYERS**

A major concern for families today is how to provide dependent care for family members while family providers are at work. Companies may deduct expenses from an employee's salary to assist the employee with his or her dependent care obligations. The dependent care tax credit also helps families with lower household incomes.

Household employers can access Dependent Care Assistance Program (DCAP) information at their company's human resources department. The DCAP may allow up to \$5,000 in pretax earnings per year to be set aside for senior care (or childcare). This is especially important if the family has undergone a change of life experience (e.g., the death of one elderly parent meaning that the family now has to care for the other aged parent in its home) that might affect its eligibility for the program. There are specific DCAP open enrollment periods during which to apply. A household employer can learn more through his or her company's HR department.

## FACTS AND FIGURES

### BENEFITS OF PAYING A CAREGIVER CORRECTLY

There are numerous benefits and protections to correctly paying a caregiver for both the employer and the employee, including the following.

#### Employer Benefits

- **Attract higher quality employees:** By doing payroll and taxes the right way, an employer can pick from a larger pool of qualified, professional, senior care candidates for the job.
- **Feel secure:** It is the law. Federal and state law mandates that each time a taxpayer signs his or her federal 1040 U.S. Individual Income Tax Return, he or she is answering the household tax question. Anything reported that is less than actual amounts is tax evasion.
- **Reduce the risk of an audit:** Once the federal government realizes an employer hasn't been compliant with household employment law, the chances of being audited skyrocket. So maintaining compliance decreases the likelihood of this happening.
- **Avoid state and federal fines and penalties:** An employer avoids steep fines (plus interest) and even jail time by paying above board and on the books. It's easy to get caught paying under the table. All it takes is a caregiver filing for unemployment after he or she leaves a job and listing his or her previous employer (the employee will be denied benefits and then the employer will come under scrutiny for not paying the proper taxes), or the caregiver is injured on the job and goes to the ER—this can trigger an investigation too.
- **Gain financial protection:** Employers in most states are protecting themselves if they pay into a workers'

compensation insurance fund, which will help them cover expenses in the event that a caregiver is injured while working. Without it, an employer could be liable for an employee's medical expenses and lost pay.

- **Take advantage of tax savings:** Employers may be eligible for federal assistance programs, such as the Earned Income Credit Program and the Dependent Care Assistance Program (DCAP). These can help cover some of the qualified expenses associated with being a household employer.
- **Work with a happier caregiver:** Employees who know they are legally on the books feel more secure in their employment relationship, and employers benefit by having happy and secure employees. The caregiver will appreciate the benefits and protections of being paid legally and feel as if he or she is truly treated as a professional. This helps create and maintain an easier working relationship between the employer and caregiver and ultimately benefits the senior in care.
- **Enjoy peace of mind:** All of the above benefits lead to one major advantage...peace of mind. Employers will know that they are practicing good human resources and are legally operating a business. An employer will have a solid relationship with a caregiver and financial protection. There will be no worry about fines, penalties, audits, or lawsuits.

### Employee Benefits

- **Avoids audits and penalties:** It is the law, so abiding by the IRS' rules provides peace of mind and reduces the likelihood that the caregiver will be audited for taxes.
- **Legal employment history:** Getting paid "on the books" creates a work history. A caregiver has a legal employment history to refer to when applying for future jobs, mortgages, loans, credit, and so on.

- **Social Security and Medicare benefits:** Employees and employers paying payroll taxes means caregivers are eligible for Social Security and Medicare credits that can help pay for living and medical expenses upon retirement.
- **Unemployment benefits:** If a caregiver is out of work for any period of time, unemployment benefits will partially replace lost wages as he or she looks for a new job.
- **Verifiable income:** Caregivers need to show that they can pay monthly installments if they apply for a car loan, student loan, mortgage, or even a credit card. Being paid legally provides that as it shows the documentation of payment which they can show to creditors.
- **Workers' compensation benefits:** With a workers' compensation policy in place, caregivers will receive assistance with medical expenses and lost wages if they are injured or become ill on the job. Workers' compensation is required for caregivers in many states.
- **Earned Income Credit:** Caregivers may qualify for the Earned Income Credit, which enables them, in some instances, to claim more money from the government than their payroll taxes if their payroll taxes were calculated without the credit.
- **Health Care Subsidy:** The *Affordable Care Act*\* requires everyone to have health insurance or pay a fine. A health insurance marketplace has been created to help people find coverage. If employees buy a policy through this marketplace, they could qualify for a subsidy and cut the insurance costs, but only if they are being paid legally.

\*Note: As the Act stands, 2017. This information may change.

## Family Medical Leave Act

The *Family Medical Leave Act* (FMLA) generally requires employers of 50 or more people to provide up to 12 weeks of unpaid, job-protected leave to eligible employees for the birth or adoption of a child, or for the serious health condition of a spouse, child, or parent. Leave is also available for reasons associated with military service. (Under the FMLA, employees must have worked for the employer for at least 12 months and have at least 1,250 hours of service in the 12 months before taking leave to be eligible for the protected leave.) While FMLA does not apply to the majority of household employers because of the stipulation of 50 or more employees, family medical leave—or a variation of it—is a valid consideration for household employers to offer their senior care workers.

Some states have family and medical leave acts, but like the federal law, most apply to employers with at least several employees, generally not to a one-employee business. However, it is best to check on individual state and locality medical leave requirements.

### California Paid Family Leave Program

In 2002, California became the first state in the country to create a Paid Family Leave (PFL) program, making it easier for employees to balance the demands of the workplace and their own family care needs at home. This program provides vital support to workers who are bonding with a new child or caring for a family member with a serious health condition.

Workers (including those in household employment and noncitizens) who contribute to the State Disability Insurance (SDI) fund are entitled up to six weeks of partial pay each year while taking time off from work to care for a seriously ill parent, child, spouse, or registered domestic partner. Workers may receive up to approximately 55 percent of their weekly wages up to a maximum weekly benefit amount. The benefit amount is determined by weekly wages in the base period. Workers do not need to take all six weeks consecutively as PFL can be taken intermittently on an hourly, daily, or weekly basis as needed. Before receiving benefits, workers must serve a seven-day nonpayable waiting period.

According to the National Conference of State Legislatures (NCSL), while only California, New Jersey, and Rhode Island offer paid family and medical leave, states with their own family leave laws include: California (paid and unpaid), Connecticut, District of Columbia, Hawaii, Maine, Minnesota, New Jersey (paid and unpaid), Oregon, Rhode Island (paid and unpaid), Vermont, Washington, and Wisconsin. Effective January 1, 2018, New York will also offer paid family and medical leave.

## **Planning and Scheduling Wages and Hours Checklist**

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- Abide by all laws—local, state, and federal.
- Check your state’s minimum wage laws, as some state and local minimum wage laws supersede the federal minimum wage (\$7.25 per hour, 2017).
- Check special living wage ordinances and requirements in your locality to ensure that you meet those wage rates and are not faced with a penalty.
- Check to be sure you file your wage reports accurately and on time to avoid penalty.
- Clearly communicate, in writing, during pre-employment discussions whether wages are gross or net.
- Clearly identify whether the employer or employee will pay income tax from wages.
- Know your overtime requirements for your caregiver and make sure these are detailed in the work agreement.
- Research the standard salaries for the employee’s job in your area and ensure you are paying the expected wage (this avoids you losing the caregiver to another position).