



# 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 employee. To even begin the interviewing process, employers should define a specific work schedule for the employee, 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 household employee.

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 wage and hour legal requirements.

## Discussing Gross Pay vs. Net Pay Payment Methods

It is extremely important that, from the beginning, all discussions about wages between household employer and household employee clearly state whether the wage will be gross pay or net pay. 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 worker, 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 employees as the employer is responsible for all taxes. Also, the tax amounts can change with tax law changes or if the employee chooses to increase or decrease his or her withholdings.

### FACTS AND FIGURES

*Note: the example used below includes the calculations: filing singly, zero allowances and zero deductions, from Massachusetts.*

#### 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 employee'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 employee would take home \$500. When this is grossed up by the employee's taxes, there is a gross payment of \$668.00 (using Massachusetts as 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 the compensation with your employee.

*Note: Calculations estimated from tax rates as of January 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).*

## Discussing Hourly Wages vs. Salary

Deciding to pay an employee an hourly wage or a salary is another key element of household employment. Generally, most household employees 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 (e.g., household managers). There are important considerations to both parties.

An employee 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, if an employer and an employee agreed 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, employers should always communicate in writing an hourly compensation to their employee, 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—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.

According to the U.S. Department of Labor (DOL), the FLSA requires 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.)

Overtime pay must be paid for hours worked over 40 hours 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 must comply with the FLSA labor law.

Live-in domestic workers *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. The law provides that caregivers are not required to be compensated for times where they reside in the home but have complete freedom from all duties (meals, sleep, or other free time), if employee and employer agree. If the meal periods, sleep time, or other free time are interrupted by work duties, the interruption must be counted as hours worked. Some states, like California, New York, Maryland, Minnesota, and New Jersey, have laws that extend greater protection to live-in help, including overtime.

## CASE STUDY



ANNIE DAVIS  
OWNER/OPERATOR  
ANNIE'S NANNIES, INC.  
SEATTLE, WA

Annie's Nannies, Inc., a nanny referral agency based in Seattle, places nannies throughout Washington State. Most nannies, who are predominantly viewed as salaried employees, work 40-50 hours per week, said owner Annie Davis. However, even if they are treated as salaried employees, overtime pay still applies to domestic workers who live outside the workplace.

One nanny who Davis placed cared for a child for four years. At the job's outset, both nanny and employers agreed on hours and salary. After four years, however, the nanny decided to end the relationship because she was working longer hours than previously agreed on. She submitted one month's notice. The nanny and the child's father argued, and the father asked the nanny not to return to work.

The family blocked the nanny's unemployment insurance claim. The nanny, upset with being out of one month's salary and with being denied unemployment insurance, contacted her attorney.

The nanny took the family to court to obtain unemployment benefits. The family failed to attend the court proceedings, and the judge ruled in favor of the nanny to access unemployment. The judge, reviewing the nanny's hours worked, informed the nanny that she was entitled to overtime pay for the period she worked. The nanny then sued the family for all of the overtime pay she was entitled to during her four years of employment. According to Davis, the case was settled out of court for \$15,000, and the nanny likely would have been awarded more money if her suit went through the court process.

It is an expensive lesson to learn. "My guess is most families do not abide by the overtime laws for domestic employees, and in fact, most do not even know domestic employees are covered by law," said Davis. "As an agency, you have to educate families on everything. Families need to know their legal requirements, including tax and payroll requirements."

Prior to hiring an employee, it is very important for any household employer to understand his or her obligations as an employer, as well as which laws apply to the household. Generally, employers do not look to take advantage of their help, but they often feel cheated when matters that adversely affect their financial expectations arise—whether the matter entails tax obligations,

misunderstanding gross wages vs. net wages, or assuming that overtime rules do not apply to them.

—Guy

### FACTS AND FIGURES

#### NOT REQUIRED UNDER FLSA

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

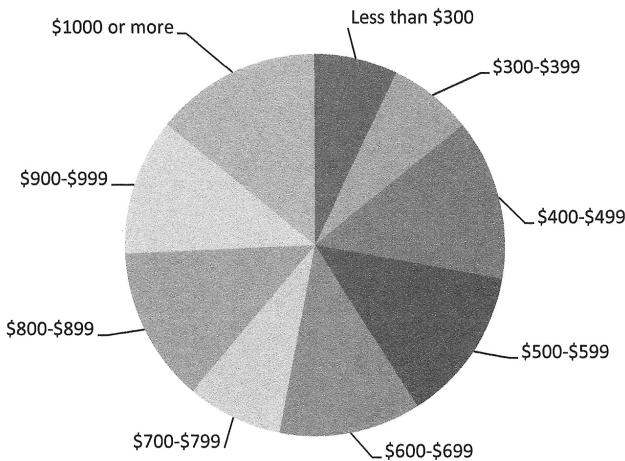
- vacation, holiday, severance, or sick pay
- meal or rest periods, holidays off, or vacations
- premium pay for weekend or holiday work
- pay raises or fringe benefits
- discharge notice, reason for discharge, or immediate payment of final wages to terminated employees

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

### FACTS AND FIGURES

#### WHAT EMPLOYERS PAY THEIR NANNIES (GROSS WAGES PER WEEK)

Question: Approximately how much does your nanny earn in pre-tax (gross) wages per week?



Source: GTM Household Employer Employment Trends 2016

## 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).

A handy guide to FLSA regulations for homecare workers can be found at [www.dol.gov/whd/homecare/homecare\\_guide.pdf](http://www.dol.gov/whd/homecare/homecare_guide.pdf)

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 employee.

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

### WAGE PROTECTION FOR HOME CARE WORKERS AND THE FINAL RULE

Under the Fair Labor Standards Act (FLSA) employees are protected for minimum wage and overtime worked. The FLSA exempts certain direct care workers from FLSA, most notably the live-in domestic worker who is exempt from overtime but must still be paid at least minimum wage. (Agencies and other third-party employers are not included in the exemption.) The Department of Labor's Final Rule which took effect January 1, 2015, revised some of the regulations surrounding domestic service workers: narrowing the meaning of companion services to fellowship, protection, and up to 20 percent of care services. The Final Rule brings important minimum wage and overtime protection to the workers working especially with those with disabilities, or elderly individuals in their homes. If more than 20 percent of a worker's hours during the work week is spent providing care services, companionship and protection cannot be claimed for that work week. In addition, the companionship exemption cannot be claimed if the worker performs any household work for other household members or any medically related service.

The main changes from previous regulations include:

- (1) the tasks that comprise "companionship services" are more clearly defined
- (2) the exemptions for companionship services and live-in domestic service employees are limited to the individual, family, or household using the services

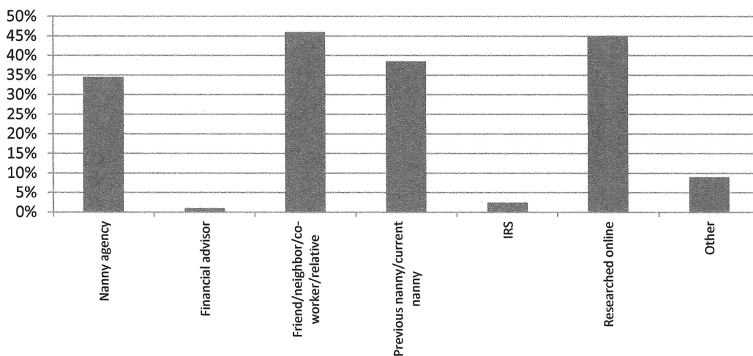
(3) the recordkeeping requirements for employers of live-in domestic service employees are revised

For more information, see [www.dol.gov/whd/regs/compliance/whdfsfinalrule.htm](http://www.dol.gov/whd/regs/compliance/whdfsfinalrule.htm)

## FACTS AND FIGURES

### WHERE EMPLOYERS LEARN ABOUT SALARY AND BENEFITS

Question: How did you determine what pay and benefits to offer your nanny?



Source: *GTM Household Employer Employment Trends 2016*

## Salaries and Minimum Wage

Salaries vary greatly in the household employment industry—just as household positions and workplaces differ. The household position is often customized to meet the needs of one particular household, 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 household employee 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 a nanny’s salary and compensation package should reflect her or his background and experience. “The more experienced, educated nanny typically is paid in the higher salary range,” she said. “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. Our children are worth more. Salary is not a place to cut corners.”

Another GTM partner agency located in New York City agreed. “An employer is paying for one-on-one time with his/her child, with no downtime. One client who wanted to employ a nanny for 40 hours for four workdays flipped out over the suggested salary range of \$450 to \$550 per week that nannies were being paid. I told her, ‘This is not your Mercedes Benz or Toyota Camry. You’re trying to cut costs in the wrong place. You must think of it as an investment in your child’s well-being.’”

## FACTS AND FIGURES

### MINIMUM WAGE PER STATE IN 2017

STATE	Rate
Federal	\$7.25
Alabama	no state minimum; \$7.25 for Federal
Alaska	\$9.80
Arizona	\$10.00
Arkansas	\$8.50
California	\$10.50 for employers with 26 or more workers, \$10.00 for employers with 25 or less employees
Colorado	\$9.30
Connecticut	\$10.10

Delaware	\$8.25
District of Columbia	\$12.50* effective July 1, 2017
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* effective July 1, 2017
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, Long Island and Westchester have higher minimum wage. NYC: \$10.50 for employers with 10 or less employees, and \$11.00 for employers with 11 or more employees.)
North Carolina	\$7.25
North Dakota	\$7.25
Ohio	\$8.15
Oklahoma	\$7.25
Oregon	\$10.25* effective July 1, 2017
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/min-wage/america.htm](http://www.dol.gov/whd/min-wage/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 is 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 nannies, housekeepers, and senior care workers, 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 than similar workers in other occupations.

According to the report, in-home work is expected to grow 53.2 percent, 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 substandard pay. There is little economic mobility and almost no financial security..."

The historic 2009 study, "Broken Laws, Unprotected Workers", ([www.unprotectedworkers.org/brokenlaws](http://www.unprotectedworkers.org/brokenlaws)) highlighted the low-wage workforce in Chicago, Los Angeles, and New York City, the nation's three largest cities. The study found that core employment laws—like minimum wage and overtime pay—were aggressively and systematically violated. It estimated that two-thirds of the 4,387 workers surveyed experienced pay violations and that the average worker lost more than \$2,600 in annual income due to the violations, a full 15 percent of annual income. Broken Laws also found:

- one in four workers (26 percent) was paid below the minimum wage in a given workweek

- 76 percent of those who worked overtime were not paid the required time and a half
- 70 percent did not get any pay at all for work performed outside their regular shift

Private households yielded the highest minimum wage violations—exceeding 40 percent. Child care workers experienced the highest violations of any job, with 89 percent of in-home child care workers earning less than the minimum wage and 90 percent facing overtime violations. Wage theft appears to be widespread, particularly with low-wage workers and immigrant workers.

## 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) went into effect in 2011 and was strengthened in 2014 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 may have to pay damages of up to \$50 per day per employee (up to \$5,000/employee), unless the employer paid the employee all wages required by law.

The WPTA 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 is 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 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 if you fail to report wages for an employee. 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 child care and senior care 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. "We feel this will make for happier clients and nannies," she said.

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 nannies unsure of their current market worth—are unfairly compensated. She said one reason for this is that the employers, who have worked with a particular nanny for several years, are unaware of the current market rate for child care. An incident proves her point.

A nanny took a position caring for a three-year-old child and doing light housekeeping. She worked a 52.5-hour workweek. Three years later, the mother remarried, and a father with two children was added to the household. Still working 52.5 hours per week, the nanny then had a significantly heavier workload. Although she was provided with a raise during her employment, the nanny was never compensated for the additional responsibilities.

The nanny spoke with her employers about a pay increase to reflect her new duties, but the employers stated they did not believe the nanny should receive a higher salary. At the nanny's second request for fair compensation for the workload, the employer and nanny agreed to keep the nanny's salary the same but to reduce her hours to 45.5 per workweek.

While the nanny was satisfied with the solution, Cino maintains that the nanny remains underpaid, largely because employers working with one employee for many years are not familiar with current compensation practices or other household employment services.

Ensuring that a household employee is fairly compensated is one of the keys to retaining a household employee. 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

## CASE STUDY



LIN TAYLOR-PLEIMAN  
FORMER OWNER/PRESIDENT  
AMERICAN DOMESTIC AGENCY, INC.  
WHITEFORD, MD

As former owner-operator of American Domestic Agency, Inc., Lin Taylor-Pleiman placed many household employees who came to her agency because she required clients to submit a signed work agreement covering all aspects of work hours and wages. One nanny came to the agency after working without a work agreement. She had been caring for three children, one with significant behavioral and emotional problems. The nanny accepted a request to travel with the family on vacation, but when she asked her employer about payment for the vacation work, the employer angrily told her that the trip was on hold. “The family, it turns out, thought room, board, and air were compensation enough,” said Taylor-Pleiman.

From that point on, the relationship deteriorated. According to Taylor-Pleiman, the nanny received nastily worded notes daily, and endured constant complaints and nitpicking. The family hired its former nanny to care for the children during the trip and did not pay the current nanny for the days they were away. After six months, the nanny left the position without having a chance to say goodbye to the children, with whom she had established a good relationship.

Household employers must remember that their vacation time is not their household help’s vacation also. The employee traveling with the

family and performing work responsibilities should be paid accordingly. Many times, employers view family vacations as a perk for the employee, when the employee views it as a continuation of his or her employment responsibilities, which is, of course, exactly what it is.

—Guy

## CASE STUDY



SUSAN TOKAYER  
OWNER-OPERATOR  
FAMILY HELPERS  
DOBBS FERRY, NY

Susan Tokayer, owner of a household employment referral agency in Dobbs Ferry, New York, said she has seldom seen nannies use sick time. Despite this, Tokayer experienced one incident regarding a nanny's sick time.

A nanny was out sick nine times during the four months that she was employed. The family thought this was excessive. A completed work agreement listed sick days "as needed," so a concrete number of paid sick days was not specified. Therefore, neither the nanny nor the family clearly understood what sick time compensation would be provided.

According to Tokayer, this occurrence demonstrates the need to be explicit in all areas of the work agreement. "Sometimes clients don't get detailed enough, even though we supply a work agreement," she said. "People don't see down the line that it could be a problem. Instead of writing 'sick time as needed,' put 'four days' down on the work agreement. Then, depending on circumstances, be open to compensation after those four days are used." Tokayer said household employees generally have three to six paid sick days (or sick or personal days) to use during an employment year.

According to Tokayer, household employers, particularly those new to household employment, want to start off the relationship congenially—so they behave delicately. "People say the work agreement seems too hard

line, too firm," she said. "This relationship is unique. It's a work relationship, but it's an intimate, friendly relationship. Families don't want to come across as too intense or too formal. But if the work agreement isn't completed thoroughly, something could be misconstrued, or there could be a problem down the line."

Tokayer said her clientele is educated, affluent, and knowledgeable about the household employment industry. However, outside of help with a newborn or child, clients most likely have not had household help before. Tokayer still has advice for all potential household employers—know yourself. "Be honest," she said. "Know who you are, what your family needs, and present that honestly. Then, pay well... No matter how hard the job is, if the nanny is well compensated, she will stay forever."

Although not required by law, an employee benefit of sick or personal paid time is standard in the corporate workplace and should be considered in the household. Many household employers shy away from hiring temporary help when a household employee is off work, and it is often detrimental if a household employer misses work him- or herself to cover for his or her household help. This is why household employers must and do take great pains to stress the importance of reliability to their household help.

Household employers should consider implementing a sick- and personal-day policy that distinguishes between sick and personal days, and a plan that accrues available hours each pay period, up to a maximum allotted amount over a one-year period. It is then important to also consider allowing employees to borrow (or not borrow) against time yet to be accrued. A common policy that is not recommended is one that allots time-off hours to those employees who did not miss a workday the previous month. For example, perfect attendance in March translates

to an extra day off to be used later. This is not a good policy because it places the motivation for the attendance on the wrong criteria. If an employee is contagiously ill, no one wants him or her on the worksite, exposing others to the illness.

Ultimately, a good policy benefits all, and a well-documented policy safeguards against most eventualities. Employers need to establish a policy that protects everyone within the household and covers all circumstances.

—Guy

## **Time-Off Payments**

Time-off payments for sick, personal, or vacation days should be agreed on by the employer and employee 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 employee 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 employee 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 employee.)
- payment schedule
- the employee's and the employer's signatures

## Q & A

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**Q.** If I employ a household worker 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 and household employees 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.

## 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

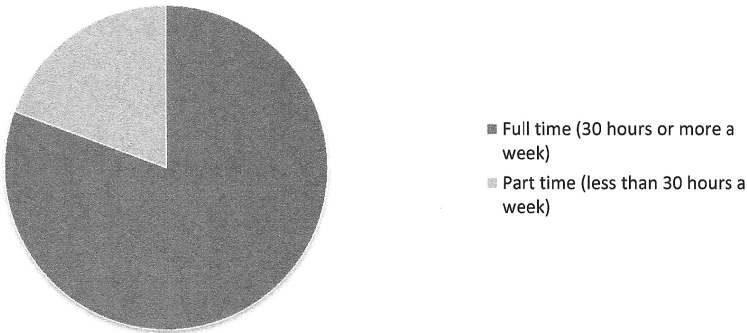


of an employee's disposable earnings. Both the employee and the employer receive copies of any garnishment. Specific guidelines will be listed on formal garnishment orders.

## FACTS AND FIGURES

### FULL-TIME JOBS VS PART-TIME JOBS

**Question: Choose the answer that best represents the hours your nanny works for you.**



Source: GTM Household Employer Employment Trends 2016

## Overtime

According to the U.S. Labor Department, the federal *Fair Labor Standards Act* (FLSA) requires employers (including household employers) to pay overtime pay of one and a half times the regular hourly pay rate. Domestic employees are nonexempt employees, according to FLSA, and therefore need to abide by minimum wage and overtime rules.

In most circumstances, FLSA requires employers to pay covered employees who live outside the workplace at least the minimum wage, as well as overtime pay at one and a half times the regular pay rate for hours worked beyond 40 in a week. Live-in employees are not subject to overtime regulations; however, state and local laws for overtime vary, and may supersede the federal FLSA. In addition, domestic service workers employed to provide babysitting services on a *casual* basis, or to provide companionship services for those who cannot care for themselves because of age or infirmity, are

currently exempt from the FLSA's minimum wage and overtime requirements, whether or not they reside in the household where they are employed. The Department of Labor's Final Rule, which went into effect on January 1, 2015, revised the definition of 'companionship services' to clarify which duties are covered under this term. The final rule also clarifies that direct care workers who perform medically-related services for which training is typically a pre-requisite are not companionship workers and therefore are entitled to the minimum wage and overtime. And, in accordance with Congress' initial intent, individual workers who are employed only by the person receiving services or that person's family or household and engaged primarily in fellowship and protection (providing company, visiting, or engaging in hobbies) and care incidental to such activities, will still be considered exempt from the FLSA's minimum wage and overtime protections.

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 nannies and 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 September 2013 (Domestic Worker Bill of Rights, AB 241), where they are required one and a half times 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 (butlers, cooks, gardeners, maids, chauffeurs, companions, housekeepers, tutors, valets, and so on) are entitled to one and a half times regular rate of pay for over eight hours in a day or 40 hours in a week and the first eight hours on the seventh consecutive day of the workweek. These employees are also entitled to double time (twice times 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. (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—by removing the 2017 sunset provision and making the law’s provisions permanent).

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 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 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 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 employee and pay accordingly.

**FACTS AND FIGURES**

**OVERTIME EXAMPLE**

Employee works 55 hours per week and is paid a standard \$700 a week.

To be overtime compliant, the suggested employee’s hourly rate = \$11.20.

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

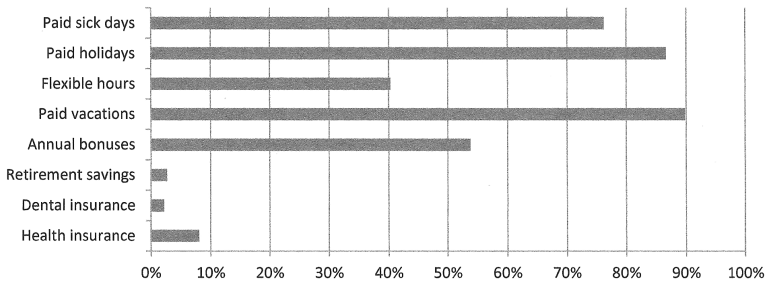
Extra 15 hours of overtime at 1.5 x standard rate of \$11.20 (\$16.80) = \$252.00.

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

**FACTS AND FIGURES**

**PAID TIME OFF, FLEXIBLE HOURS, AND BENEFITS OFFERED TO NANNIES**

**Question:** Please check any of the following benefits you provide to your nanny.



Source: GTM Household Employer Employment Trends 2016

## **Compensation During Travel and Off-Site Events**

Before an employer hires an employee, 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 household employee will be paid when he or she travels with the family, 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 employee'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:
  - o federal
  - o Old Age Survivors Disability Insurance (OASDI) (e.g., Social Security)
  - o Medicare
  - o state withholding
  - o local tax withholding
- net pay
- year-to-date payroll information

- sick time and vacation time accruals
- withholding allowances (according to withholding status)
- health reimbursement account

*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 Inc. (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

LEANN BRAMBACH  
EXPERIENCED AGENCY OWNER  
SEATTLE, WA

Leann Brambach formerly owned Home Details, Inc. (HDI), an agency that placed household employees in positions throughout Seattle. Citing an example of one nanny placement, Brambach said, "Both nannies and clients need to be educated from the get-go about their tax obligations and gross versus net."

Brambach placed a woman in a position as a part-time nanny and household assistant for \$13 per hour. The employee asked her employer to raise her salary to \$15 per hour after learning that the job was more work than anticipated and after comparing salaries with other nannies. The employer agreed and asked Brambach to update the work agreement. In updating the work agreement, another issue became apparent—both the nanny and the employer thought that the other was paying income tax on the nanny's salary. In the end, the employment failed. The employer was willing to pay \$15 per hour gross, which equaled approximately \$12 per hour net. The nanny resigned, believing that she was misled.

“This was one big misunderstanding that left both parties feeling frustrated, and trust was broken,” said Brambach.

Household employers can opt to not withhold federal and state income taxes from their employee’s pay, placing the burden on the employee to make estimated tax payments throughout the year. The rule is that both parties must agree that the employer will withhold these taxes; otherwise, the employee is responsible.

When an employee submits a completed W-4 form to the employer and the employer accepts it, the responsibility of withholding is then placed upon the employer. Withholding is commonly done through payroll deduction. Because this practice is so widespread, an employer who is unwilling to accept the responsibility must clearly spell out in the work agreement his or her stance, as well as notify the employee in person. If it is not, great friction can easily build to a breaking point in the employer-employee relationship—especially since employees frequently misunderstand the calculation and payment of their own income taxes.

—Guy

## CASE STUDY



DENISE SHADE  
HOUSEHOLD EMPLOYER  
NEW YORK, NY



Denise Shade, senior vice president of Key Bank's foreign exchange unit and mother of two, could easily be considered a financial whiz. Yet despite her obvious executive-level financial ability, Shade uses GTM's services for nanny 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 GTM's services were 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 (as Denise Shade noted). In addition, employers are, at times, questioned by the IRS or their state of residence, and need to submit necessary forms and records. All this is annoying and time consuming. Many household employers save themselves significant time 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 can be assured that they are protected and will be 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 child care or senior care. This is especially important if the family has undergone a change of life experience (e.g., the birth of a new baby) 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 AN EMPLOYEE CORRECTLY**

There are numerous benefits and protections to correctly paying an employee 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 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 an employee filing for unemployment after he or she leaves a job and listing the previous employer (the employee will be denied benefits and then the employer will come under scrutiny for not paying the proper taxes), or the employee 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 an employee 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, Child Care Tax Credit, 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 employee:** Employees who know they are legally on the books feel more secure in their employment relationship, and the employer benefits by having happy and secure employees. The nanny will appreciate the benefits and protections of being paid

legally and feel as if he or she is truly treated as the professional that he or she is. This helps create and maintain an easier working relationship between the employer and employee.

- **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 an employee 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 employee will be audited for taxes.
- **Legal employment history:** Getting paid "on the books" creates a work history. Employees have 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 mean employees are eligible for Social Security and Medicare credits that can help pay for living and medical expenses upon retirement.
- **Unemployment benefits:** If an employee 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:** An employee needs to show that he or she can pay monthly installments if he or she applies for a car loan, student loan, mortgage, or even a credit card. Being paid legally provides that, as it shows the documentation of the employee's pay which he or she can show to creditors.

- **Workers' compensation benefits:** With a workers' compensation policy in place, an employee will receive assistance with medical expenses and lost wages if he or she is injured or becomes ill on the job. Workers' compensation is required for household employees in many states.
- **Earned Income Credit:** Employees 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 an employee buys a policy through this marketplace, he or she could qualify for a subsidy and cut the costs of insurance, but only if he or she is paid legally.

## **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 employers to offer their domestic help.

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

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 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 bond with a newborn baby, adopted, or foster child; and 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 (with New York offering paid family and medical leave, effective January 1, 2018), states with their own family leave laws include: California (paid and unpaid), Connecticut, DC, Hawaii, Maine, Minnesota, New Jersey (paid and unpaid), Oregon, Rhode Island (paid and unpaid), Vermont, Washington, and Wisconsin.

## **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 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 your employee to another position).