

Fact Sheet #79B: Live-in Domestic Service Workers Under the Fair Labor Standards Act (FLSA)

This fact sheet explains which workers are live-in domestic service employees under the FLSA, including when an employer may claim the FLSA's overtime compensation exemption for such workers.

Who Is a Live-In Domestic Service Worker?

Domestic service workers provide services of a household nature in or about a private home. (See [Fact Sheet # 79: Private Homes and Domestic Service Employment Under the Fair Labor Standards Act \(FLSA\)](#) for information about what qualifies as a private home.) Domestic service workers include companions, babysitters, cooks, waiters, maids, housekeepers, nannies, nurses, caretakers, handymen, gardeners, home health aides, personal care aides, and family chauffeurs.

Persons employed in domestic service in private homes are covered by the FLSA; they must be paid at least the federal minimum wage for all hours worked and overtime pay at time and a half the regular rate of pay for all hours worked over 40 in a workweek, unless they are subject to an exemption. (See [Fact Sheet #79A Companionship Services Under the Fair Labor Standards Act \(FLSA\)](#) for information about the "companionship services" exemption.) Domestic service workers who reside in the employer's home (and thus are "live-in" domestic service workers) may be exempt from the FLSA's overtime pay requirement..

In order to be a live-in domestic service worker, a worker must reside on the employer's premises either "permanently" or for "extended periods of time."

- A worker resides on the employer's premises permanently when he or she lives, works, and sleeps on the employer's premises seven days per week and therefore has no home of his or her own other than the one provided by the employer under the employment agreement.
- A worker resides on the employer's premises for an extended period of time when he or she lives, works and sleeps on the employer's premises for five days a week (120 hours or more). If a domestic worker spends less than 120 hours per week working and sleeping on the employer's premises, but spends five consecutive days or nights residing on the premises, this also constitutes an extended period of time.
 - Example: An employee who resides on the employer's premises five consecutive days from 9:00 a.m. Monday until 5:00 p.m. Friday (sleeping four consecutive nights on the premises) is residing on the employer's premises for an extended period of time.
 - Example: A worker who resides on the employer's premises five consecutive nights from 9:00 p.m. Monday until 9:00 a.m. Saturday (sleeping four straight days on the premises) is considered to reside on the employer's premises for an extended period of time.

Employees who do not meet this definition are not considered live-in domestic service workers and must be paid at least the federal minimum wage for all hours worked and overtime pay at one and a half times the regular rate of pay for all hours worked over 40 in a workweek.

- Workers who work temporarily for the household for only a short period of time, such as two weeks, are not considered live-in domestic service workers, because residing on the premises of the household implies more than temporary activity. The employer, in this case, cannot claim the overtime pay exemption and must pay overtime at one and a half times the regular rate of pay for all hours worked over 40 in the workweek.
- Workers who work 24-hour shifts but are not residing on the employer's premises "permanently" or for "extended periods of time" are not considered live-in domestic service workers and, thus, the workers must be paid overtime at one and a half times the regular rate of pay for all hours worked over 40 in the workweek.

Who Can Claim the Exemption?

Domestic service workers who reside in the employer's home and are employed by an individual, family, or household are exempt from the overtime pay requirement, although they must be paid at least the federal minimum wage for all hours worked.

The Department of Labor amended its regulations governing the employment of live-in domestic service workers. Under the revised regulations, effective January 1, 2015, third party employers, such as home care agencies, may not claim the overtime exemption for live-in domestic service workers, and must pay such workers at least the federal minimum wage for all hours worked and overtime pay at one and a half times the regular rate of pay for all hours worked over 40 in a workweek, even if the worker is jointly employed by the household.

What are the FLSA Requirements Regarding Live-In Domestic Service Workers?

Employers must pay live-in domestic service workers at least the federal minimum wage, currently \$7.25 per hour, for all hours worked. (The worker may be entitled to a higher hourly wage under state law requirements.) When a live-in worker engages in typical private pursuits such as eating, sleeping, entertaining, and other periods of complete freedom from all duties, he or she does not have to be paid for that time. For a live-in domestic service employee, such as a live-in home health aide or a nanny, the employer and worker may agree to exclude the amount of time spent during a bona fide meal period, sleep period, and off-duty time. If the meal periods, sleep time, or other periods of free time are interrupted by a call to duty, the interruption must be counted as hours worked. In these circumstances, the Department will accept any reasonable agreement of the parties, taking into consideration all of the pertinent facts. However, the employer must still track and record all hours worked by domestic service workers, including live-in employees, and the workers must be compensated for all hours actually worked notwithstanding the existence of an agreement.

(See [Fact Sheet # 79D Hours Worked Applicable to Domestic Service Employment Under the Fair Labor Standards Act \(FLSA\)](#).)

The employer must maintain a copy of the agreement discussed above. If the number of hours actually worked consistently differs from the existing agreement, the employer and live-in domestic service worker must enter into a new written agreement that reflects the actual hours worked by the worker. Under the Department's revised regulations, effective January 1, 2015, the employer is also required to keep records showing, among other things, the exact number of hours worked by the live-in domestic service worker. The employer may do this, however, by requiring the worker to record his or her actual hours worked and to submit that record to the

employer. *See* 29 CFR § 516.2(a) and § 552.110. Some employers may develop recordkeeping forms that, for example, require the worker to identify what tasks were performed and the hours spent in various activities; others may simply require employees to keep notes by hand of their hours worked; and, of course, employers may decide to record the hours themselves. In any case, the employer's failure to keep accurate record of hours worked may result in back wage liability. (See [Fact Sheet #79C: Recordkeeping Requirements for Individuals, Families, or Households Who Employ Domestic Service Workers Under the Fair Labor Standards Act \(FLSA\)](#), for more information.)

Where to Obtain Additional Information

For additional information, visit our Wage and Hour Division Website: <http://www.wagehour.dol.gov> and/or call our toll-free information and helpline, available 8 a.m. to 5 p.m. in your time zone, 1-866-4USWAGE (1-866-487-9243).

This publication is for general information and is not to be considered in the same light as official statements of position contained in the Department's regulations.

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