

Compensating Home Care Workers

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Effective January 1, 2015, changes to federal and Connecticut law will impact the compensation of home care workers. [Federal DOL Final Rule Fact Sheet](#) and [Public Act 14-159](#). Home care workers typically provide “companionship services,” including “fellowship” and “protection,” for elderly or disabled persons. “Fellowship” is defined as engaging the person in social, physical and mental activities, while “protection” means being present in the person’s home, or accompanying them outside to monitor their safety and well-being. Examples of companionship services include conversation, reading, games, crafts, accompanying a person on a walk, running errands, and attending appointments and social events. Companionship services differ from “care,” which includes assistance with activities of daily living, such as dressing, grooming, feeding, bathing, toileting and transferring.

Home care workers are typically hired directly by the person in need or their family, or through a third party home care agency that directly employs the worker. A different set of rules now applies to each hiring arrangement.

Under the new rules, where the individual in need, or their family, directly hire the home care worker, the worker need not be paid the minimum wage, or overtime for work in excess of 40 hours in a workweek. This is because these workers are covered by a special “domestic service exemption” in the federal Fair Labor Standards Act, and under Connecticut law. The special exemption is lost, however, if the employee spends more than 20% of their time performing “care” duties during any workweek. Also, if the worker performs any household

work that primarily benefits other members in the household beyond the person needing help, such as cooking for the entire family or doing their laundry, they must be paid the minimum wage and overtime for that week. Likewise if the worker performs any “medically related services” such as catheter care, turning and repositioning, ostomy care, tube feeding, or physical therapy, they must be paid the minimum wage and overtime for that week.

When the worker is hired through a third party agency, the agency must now pay the worker the minimum wage and overtime, even if the worker only provides “companionship services.” In effect, agencies may no longer take advantage of the “domestic service exemption.” That exemption now only applies to workers hired directly by the person in need of care, or their family.

However, agency employers can now count certain hours as non-work time under specific conditions. Provided the employee is performing “companionship services” and is required to be present at the worksite for a period of not less than 24 consecutive hours, the employee and employer may agree in writing to exclude a regularly scheduled sleeping period of not more than 8 hours from hours worked. This exception is only permitted if there are adequate on-site sleeping facilities for the employee, and the employee actually sleeps at least 5 hours. If the sleep period is interrupted by an assignment of work, the interruption shall be counted as work hours. If because of the interruption, the employee fails to get at least 5 hours sleep, the entire 8 hour period must be counted as work time. Also, even if the employee’s sleep time exceeds 8 hours, only 8 hours may be excluded from hours worked. Where the employee is on-site for less than 24 hours, all hours must count as work time, even if the employee sleeps or engages in non-work activities during the period they are on-site.

These changes are expected to affect about 2 million home care workers who will now receive both the minimum wage, and overtime pay for all hours worked in excess of 40 in a workweek.

Given the complexity of this topic, I've prepared a table summarizing the rules:

Type of Employment	Individual Employer (Employed by person needing care or their family)	Third Party Employer (Agency)
Home Care Worker	<p>-As long as worker only provides “companionship services” there is no obligation to pay the minimum wage or overtime</p> <p>-In any week where over 20% of the time is spent providing “care,” the minimum wage and overtime must be paid in that week</p> <p>-In any week in which any time is spent providing “medically related services,” the minimum wage and overtime must be paid</p> <p>-In any week in which any time is spent performing household work primarily benefiting other than the person in need of care, the minimum wage and overtime must be paid</p>	<p>-Must pay the worker the minimum wage and overtime even if they only provide “companionship services”</p> <p>-Can have a <u>written</u> agreement deducting up to 8 hours from work time for sleep each day, if the worker is on site at least 24 hours, and gets at least 5 hours of actual sleep. Any time spent providing services during the 8 hour sleep period must be paid.</p>
Domestic Live-In (Housekeeper)	<p>-Worker must be paid minimum wage, but not overtime</p> <p>-Can have <u>written</u> agreement deducting a reasonable number of hours for sleep and other personal time</p>	<p>-Worker must be paid minimum wage <u>and</u> overtime</p> <p>-Can have <u>written</u> agreement deducting a reasonable number of hours for sleep and other personal time</p>

For more information or assistance, contact scott@schaffer-law.com or 860-216-1965.

www.schaffer-law.com