



## Frequently Asked Questions California Domestic Workers' Wage & Hour Rights

### 1. Who is a domestic worker?

Domestic workers include nannies, childcare providers, caregivers or attendants to people with disabilities or seniors, housecleaners, cooks, gardeners, or other household workers. They work in a private home, whether they are directly hired by the household or by an agency.

### 2. Who is a personal attendant?

Personal attendants are caregivers and child care providers who spend a significant amount of time caring for children, elderly or people with disabilities. Personal attendants can either be live-in or live-out employees. If more than twenty percent (20%) of the worker's time in a week is spent on non-caretaking duties such as general housekeeping, the worker is NOT a Personal Attendant.

### 3. Do domestic workers have the right to minimum wage?

Yes all domestic workers are entitled to minimum wage, except babysitters under the age of 18 and the employer's parent, spouse or child.

The state minimum wage is as follows:

- 2008-2013 - \$8.00 per hour
- July 2014 - \$9.00 per hour
- Jan. 2016 - \$10 per hour

Some cities have a higher minimum wage. The San Francisco minimum wage in 2014 is \$10.74 per hour. The San Jose minimum wage in 2014 is \$10.15 per hour.

### 4. What overtime rights do personal attendants have?

Personal attendants were originally excluded from overtime protection but in September 2013, the Governor signed into law the Domestic Worker Bill of Rights, AB 241, extending overtime protection to personal attendants.

AB 241 provides overtime protection to personal attendants (both part-time and full-time workers) as follows:

- 1.5 x regular rate of pay for work over 9 hours in a day
- 1.5 x regular rate of pay for work over 45 hours in a week

AB 241 exempts certain categories of personal attendants from overtime protection. Key exemptions are:

- Personal attendants who provide domestic services through the In Home Support Service (IHSS) program
- Personal attendants who provide domestic services through Department of Developmental Services pursuant to the Lanterman Developmental Disability Services Act (DDS)
- Casual babysitters
- Babysitters under age of 18
- Close family members such as parent, grandparent, spouse, sibling, child

AB 241 goes into effect in January 2014. It will expire or “sunset” on January 1, 2017, unless the Legislature extends or removes the sunset provision.

The Governor will convene a commission made up of domestic work employees and employers to study the impact of the bill.

## **5. What are the overtime rules for domestic workers who are not personal attendants?**

Live-out domestic workers who are not personal attendants are entitled to:

- 1.5 x regular rate of pay for work over 8 hours in a day or 40 hours in a week
- 1.5 x regular rate of pay for the first 8 hours on the 7th consecutive day
- 2.0 X regular rate of pay for work over 12 hours in a day
- 2.0 X regular rate of pay for work of over 8 hours on the 7th consecutive day

Live-in domestic workers who are not personal attendants are entitled to:

- 3 hours off in a 24 hour workday (it can be non-consecutive);
- 12 consecutive hours off in a 24 hour workday;
- 24 consecutive hours off for every 5 days of work.
  
- 1.5 x regular rate of pay for work over 9 hours in a day;
- 1.5 x regular rate of pay for the first 9 hours of work on the 6<sup>th</sup> and 7<sup>th</sup> consecutive day;
- 2.0 x regular rate of pay for more than 9 hours on the 6<sup>th</sup> or 7<sup>th</sup> consecutive day.

## **6. What is the regular rate of pay in California?**

- For an hourly employee, the regular rate of pay is the regular hourly wage.

- When an employee who is entitled to overtime is paid on a fixed salary, the salary does not include overtime wages, regardless of any agreement between the employer and employee.
- If the employee is paid a flat daily rate, the daily rate needs to be divided by the total number of hours worked in a day, not to exceed 8. For example, the regular rate of pay for an employee who is paid \$80 a day for a 12 hour day is \$10 an hour ( $\$80 \div 8 = \$10$ ).
- If the employee is paid by salary, the salary must be converted to an hourly rate: For example, if the monthly salary is \$1,600 per month for a worker working 50 hours:

$\$1,600 \text{ per month} \times 12 \text{ months} = \$19,200 \text{ per year.}$

Divide by 52 weeks:  $\$369.23 \text{ per week.}$

Then divide by the number of weekly hours, not to exceed 40 ( $\$369.23 \text{ per week} / 40 \text{ hours per week} = \$9.23 \text{ per hour.}$  This is the regular rate of pay.

- If the regular rate of pay is below the minimum wage, the minimum wage will be used as the pay rate.

## **7. What overtime rights do domestic workers have under federal law?**

Federal law provides overtime at time and one-half after 40 hours of work in a week to the following: live-out domestic workers such as nannies, housecleaners, cooks and other domestic workers who are not caregivers or companions.

In September 2013, the federal Department of Labor revised its regulations to provide most domestic workers with federal minimum wage and overtime. The regulations do not take effect until 2015. In California, employers must comply with the law that provides greater coverage. [A more detailed fact sheet will be released to discuss the DOL regulations.]

## **8. Do domestic workers have the right to meal breaks?**

All domestic workers except personal attendants have the right to:

- 30 minute unpaid meal break for work period of more than 5 hours; a second meal period of 30 minutes if work period is more than 10 hours in a day.
- An employee may agree in writing to take an on-duty meal period only when the nature of the work prevents the employee from being relieved of all duty. The employee can revoke the agreement anytime. The on-duty meal period must be paid.
- An employee who works only 6 hours per day or less can waive the meal period.
- If an employee's total work time is no more than 12 hours per day, a second meal break may be waived by as long as the first meal period was not waived.
- Employer must pay one additional hour of pay at the employee's regular rate of pay for each work day that there is a meal break violation.

## **9. Do domestic workers have the right to rest breaks?**

All domestic workers except personal attendants have the right to:

- 10 minutes rest period for shifts from 3 ½ to 6 hours in length;
- 20 minutes total rest periods for shifts of more than 6 hours and up to 10hours;
- 30 minutes total rest periods for shifts of more than 10 hours and up to 14 hours.
- Authorized rest periods are counted as hours worked and must be paid.
- Employer must pay one additional hour of pay at the employee’s regular rate of pay for each work day that there is a rest break violation.

**10. Can workers be charged for meal and lodging, if provided by the employer?**

An employer who provides meals and/or lodging to an employee may credit part of the cost of those meals and/or lodging against the minimum wages earned by the employee. There must be an agreement in writing with the employee. Meals provided by an employer must be an adequate, well-balanced serving of a variety of wholesome, nutritious foods. Lodging must be adequate, decent and sanitary and available for full-time occupancy. Employees shall have their own bed.

Such credits against the minimum wage may not exceed (as of July 2014):

\$3.26 for each breakfast	Room occupied alone: \$42.33 per week
\$4.47 for each lunch	Room shared:   \$34.94 per week
\$6.01 for each dinner	Apartment: 2/3 of the ordinary rental value OR \$508.38 per month, whichever is less
	If a couple is employed by the employer, 2/3 of the ordinary rental value or \$752.02 per month, whichever is less

**11. What are the record-keeping requirements?**

- Employers who hire housecleaners, cooks, gardeners, & non-personal attendants must keep time records of when the employee begins and ends each work period including meals. The employer must also keep a record of total daily and weekly hours worked and total wages paid each payroll period. Employer must keep records for at least 3 years.
- Employers of personal attendants are exempt from the above record-keeping. However, because of the new overtime obligation under AB 241, it is prudent for these employers to also keep time records.

**12. Who enforces the wage and hour rights in California?**

A worker can bring a lawsuit in court against the employer or file an administrative claim with the California Division of Labor Standards Enforcement (called the Labor Commissioner). A worker can recover up to three years of violations at the Labor Commissioner and up to four years if they file in court. In addition to paying the wage or meal/rest break premium pay, an employer may also be liable for liquidated damages (for paying below the minimum wage) and penalties (if the employee no longer works for the employer). In court, the employer may also have to pay the employee’s attorney’s fees and costs.