



United States Department of Labor (USDOL) - Changes Rules for In-Home Caregiver Pay

Effective 1/1/15, the USDOL changed rules regarding pay for all in-home caregivers across the country.

There are five new changes to the rules that need to be considered:

1. Caregivers must be paid at least the minimum wage.
2. Caregivers must be paid for overtime (any work more than 40 hours in one week).
3. Travel time is compensable between job sites.
4. Live-in rule changes.
5. Recordkeeping requirements.

Most families hire caregivers in three different ways: hire with a licensed Home Services Agency, hire with a licensed or unlicensed Placement Agency, or find someone on their own. I will discuss how the new rules affect each of these categories.

Home Services Agency – These agencies are licensed by the Illinois Department of Public Health (IDPH), and are the employer of the caregiver. This offers the most protection for the employee and the client as the Agency is responsible for having liability insurance, workman's compensation insurance, withhold and pay taxes for the employee and pay the employer portion of the taxes due. In addition, the agency is responsible for training and IDPH required background checks. The company must supervise the employees with home visits. The new rules require all Home Service Agencies to pay minimum wage, overtime and travel pay between jobs. Live-in care is allowed but must be paid "hourly" and not "by the day". In most cases the caregiver must be paid a minimum of 13 hours for the day. The caregiver is entitled to overtime for any work more than 40 hours in one week. During the 24-hour day in which the caregiver is at the home of the client, the agency may deduct up to 8 hours for sleep and 3 one hour meal breaks. $24-8-3=13$ hours paid minimum. The employee must actually get, and document, the 3 one hour meals breaks and 8 hours of sleep time. If the employee's sleep time or meal time is interrupted, they must be paid for that time worked. If the employee does not get at least 5 hours sleep, the entire 8 hours overnight must be paid. Also, if the employee is actually needed to stay at the home, even when the client is napping, the employee must be paid for those hours. The USDOL considers that time compensable as "engaged to wait" time. The record keeping for live-in must consist of a written agreement between the Agency and the caregiver, and documentation of all breaks and sleep hours taken.

Home Services Placement Agencies and On-line Placement Agencies put the burden of withholding and paying the employee's tax AND paying the employer portion of the tax on the consumer or family. See IRS Publication 926: <https://www.irs.gov/pub/irs-pdf/p926.pdf>. In this case, the employer is the consumer. In addition to the tax burden, the family is responsible for providing Worker's Compensation Insurance for the employee. These types of companies do not supervise the employee in the home. The IDPH licensed Placement Agencies are required to provide training to the caregiver and a do a State background check. The



online agencies, who are not licensed, are not required to do either. In most cases, the relationship between the consumer, the employee and the agency is considered “Joint Employment”: See USDOL Fact Sheet 79E regarding Joint Employment: <https://www.dol.gov/whd/regs/compliance/whdfs79e.htm> . In this case the employee is entitled to minimum wage and overtime. Live-in care is allowed, but must be paid “hourly” and not “by the day”. In most cases, the caregiver must be paid a minimum of 13 hours for the day. The caregiver is entitled to overtime for any work more than 40 hours in one week. During the 24-hour day that the caregiver is at the home of the client, the Consumer may deduct up to 8 hours for sleep and 3 one hour meal breaks. 24-8-3= 13 hours paid minimum. The employee must actually get, and document, the 3 one hour meals breaks and 8 hours of sleep time. If the employee’s sleep time or meal time is interrupted, they must be paid for that time worked. If the employee does not get at least 5 hours sleep, the entire 8 hours must be paid. Also, if the employee is actually needed to stay at the home, even when the client is napping, the employee must be paid for those hours. The UDOL considers that time compensable as “engaged to wait” time. The record keeping for live-in must consist of a written agreement between the Consumer and the caregiver, and documentation of all breaks and sleep hours taken.

Consumer Hires A Caregiver Privately. In this case, the Consumer once again is the employer and has the burden of withholding and paying the employees tax AND paying the employer portion of the tax on the consumer or family. See IRS Publication 926: <https://www.irs.gov/pub/irs-pdf/p926.pdf> The employer is the consumer. In addition to the tax burden, the family is responsible for providing Worker’s Compensation Insurance for the employee. When hiring an employee for “live-in” care, minimum wage must be paid, but overtime does not. During the 24-hour day in which the caregiver is at the home of the client, the Consumer may deduct up to 8 hours for sleep and 3 one-hour meal breaks. 24-8-3= 13 hours paid minimum. The employee must actually get, and document, the 3 one hour meals breaks and 8 hours of sleep time. If the employee’s sleep time or meal time is interrupted, they must be paid for that time worked. And if the employee does not get at least 5 hours sleep, the entire 8 hours overnight must be paid. Also, if the employee is actually needed to stay at the home, even when the client is napping, the employee must be paid for those hours. The USDOL considers that time compensable as “engaged to wait” time. A family must have a written agreement with the caregiver regarding hours worked and agree on a pay rate. When a caregiver provides care on an hourly basis, they are required to be paid minimum wage and overtime If more than 20% of their time is spent on caregiving and not companionship only. Most cases will require overtime to be paid. However, if the consumer is in need of companionship only and does not need help with ADL’s, then overtime pay is not required. See <https://www.dol.gov/whd/regs/compliance/whdfs79a.htm> for more details.

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