

## **A WAGE & HOUR LAW CHECK-UP FOR IN-HOME CAREGIVERS**

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Oregon's unemployment rate continues to hover somewhere north of 10%, but under projections for some jobs, healthcare jobs to be precise, employment growth should exceed 20%. According to the Oregon Labor Market Information System, opportunities for home health aids in particular will have expanded by more than 25% from 2008 to 2018. Apparently, the high cost of institutional care and the desire most of us share to live as independently as possible can trump the economy and create a steady demand for in-home caregivers. At the same time, in-home caregiving can often blur the traditional lines between the home and the workplace, casual and formal employment and sometimes even the line between family member and employee. Here are some of the common wage and hour questions we receive from employers:

### **Q: Do wage and hour laws apply to in-home caregivers?**

A: Both state and federal wage and hour laws generally require that domestic service employees like cooks, housekeepers, nurses, maids and janitors be paid at least minimum wage and overtime (though there is an exemption from overtime for live-in domestic service employees). The important exception to this rule is that domestic service employees who provide companionship services in a family home need not be paid minimum wage or overtime. Under the law, "companionship services" consist of providing care, fellowship and protection for individuals who cannot care for their own needs because of advanced age or mental or physical infirmity.

### **Q: Are there limitations on the services an in-home caregiver can provide?**

A: Companionship services may include things like meal preparation, bed making, washing of clothes and other similar services. They may also include the performance of general household work so long as it does not exceed 20% of the total weekly hours worked by the companion.

Companionship services do not include services which require and are performed by trained personnel like registered or practical nurses: Companions who provide such services are subject to Oregon's minimum wage and overtime law unless exempted under another provision of that law.

**Q: If a companionship worker is employed by a third party (rather than the person receiving services), is the worker still exempt from Oregon's minimum wage and overtime laws?**

A: Yes, in 2007 the U.S. Supreme Court determined that companionship workers who are employed to provide services in or about a private household by a third party can qualify for the exemption from minimum wage and overtime. Keep an eye on this one though; the US Department of Labor has noticed its intent to revisit this issue in upcoming rule revisions.

**Q: What are the wage and hour requirements for companions for sleep time, rest breaks and meal periods? May I deduct the cost of meals and rent from a companion's wages?**

A: Oregon's rules on working conditions like sleep time, rest breaks and meal periods arise out of Oregon's minimum wage law and do not apply to employees who are exempt from that law. Companions and their employers are free to negotiate and enter into any mutually acceptable agreement regarding these arrangements.

Companions are not exempt from Oregon's wage collection law and for that reason, deductions from a companion's wages for meals or lodging will need to be authorized in writing, be for the companion's benefit (i.e., not required as a condition of employment) and be recorded in the employer's books.

**Q: Do babysitters fall within the exemption for companionship services providers?**

A: Not usually. Although casual babysitters are exempt, federal law includes babysitters employed on other than a casual basis within the category of domestic service employment who must be compensated at no less than minimum wage. Live-in domestic service providers (including child care workers) need not, however, be paid overtime for hours worked over 40 in a work week.

**Q: What if I hire a companionship services provider as a contractor?**

A: Workers who provide services for pay will be considered employees unless they meet specific requirements to be considered independent contractors. In general, an independent contractor will need to be (1) free from direction and control as to how services are provided and (2) will need to be providing those services as part his or her operation of an independently established business. Additional information on how BOLI classifies independent contractors is available on our website or feel free to visit Oregon's interagency website on this topic at [www.oregonindependentcontractors.com](http://www.oregonindependentcontractors.com).

**For more information on this and other topics of interest to Oregon employers, you can also visit the Technical Assistance for Employers (TA) website at [www.oregon.gov/boli/ta](http://www.oregon.gov/boli/ta) or attend one of TA's upcoming seminars. You can also reach TA by phone at 971-673-0824.**