

Good Homecare is Fair Homecare:

Tips for Hiring through Private Homecare Agencies in California

The following checklist will help you determine which homecare agencies are compliant with key labor laws, provide fair and dignified employment to their homecare team, and ensure a safe and consumer-directed approach that respects the needs of the consumer (and their loved ones if they are involved). We recommend that you use this to help you decide on a homecare agency.

Note: *In California, homecare agencies are referred to as “Home Care Organizations” or HCOs by the Department of Social Services. Homecare agencies will hereafter be referred to as Home Care Organizations. We use the term “homecare worker” to refer to the workers providing personal care assistance. Other names for this role include home attendant, personal attendant, caregiver, or personal care assistant. We use the term “consumer” to refer to the person receiving the personal care assistance, and we refer to the person arranging, paying for and supervising the homecare worker as the client (which may be the same as the consumer or may be a member of the consumer’s long-term care planning team). The long-term care planning team may be made up of family members, other loved ones, the consumer’s social worker, the consumer’s physician or other people committed to working with the consumer to get the long-term services and support they need to remain as independent as possible.*

Licensing, Registration & Business Classification

Clarify if the agency classifies themselves as a *referral agency* or as a *homecare agency*, known more formally as a [“Home Care Organization \(HCO\).”](#)

A referral agency does not directly employ homecare workers. Rather, it helps you locate a homecare worker in exchange for a referral fee. If you decide to use a referral agency, it is important to note that you as the client are considered the “employer of record” and are liable for compliance with all [relevant domestic employment laws](#). Since the referral agency is not an employer, they should not set schedules and rates, dictate how work should be done, and will not provide sick leave or other benefits. These things are your responsibility.

If the agency is not a referral agency, it must be registered as a Home Care Organization and be classified as the employer of record. It is crucial to be aware of the classification so you understand your obligations under the law. **The remainder of this guide is tailored to individuals who hire through Home Care Organizations.**

Ensure that the HCO is registered with the California Home Health Aide Registry.

All HCOs in California are mandated to register with the California Home Health Aide Registry. Licensed HCOs are required to provide bonding, professional liability insurance, and workers

compensation insurance. If your agency is not registered, it is potentially operating illegally as an unlicensed HCO or functioning as a referral agency. To verify that your prospective agency is in fact an HCO, [search for a Licensed Home Care Organization through the California Department of Social Services Registry.](#)

❑ Ensure the HCO has a current workers compensation policy to cover all homecare workers that will work in your home.

Ask for a copy of the workers compensation policy and for proof of payment of workers compensation for the last calendar year. Sometimes HCOs will initially purchase a policy to be able to provide proof to clients but then fail to make payments on the policy and the policy is cancelled. If this occurs and a homecare worker gets injured on the job, there is no policy in place to cover the costs of medical attention, rehabilitation or wage replacement benefits.

Compliance with Labor Laws & Fair Treatment of homecare workers

❑ Inquire if the HCO, or its owner, has been subjected to legal action by its employees or the government for unpaid wages and/or other labor violations.

Wage theft and the failure to pay minimum wage and overtime are common violations. Unfortunately, even after a legal settlement is reached, HCO's often do not pay out what is owed. If you do find evidence for labor violations, ask if the HCO or owners have remedied the situation by paying all wages owed and relevant penalties. Make it clear to them that respecting workers rights on the job is a priority for you as a consumer.

While not all legal action may indicate noncompliance, it could be a sign that the HCO is a bad employer. If the HCO tells you they have not paid the wages owed or if they don't commit to follow the law in the future, we recommend that you do not hire them.

❑ Confirm that the HCO pays at least minimum wage to their homecare workers, according to the law. Inquire as to the hourly wage paid to their homecare workers.

Homecare workers, with very few exceptions, have the right to be paid the highest minimum wage for their area (state or local). Also, homecare workers should receive the minimum wage of the city or county where *they perform their work*, not where the agency itself operates. [Find your city or county's minimum wage law here.](#)

As of January 1, 2021 the California minimum wage is \$13/hour for employers with 25 or fewer employees and \$14/hour for employers with 26 or more employees. The minimum wage may be higher based on the city or county you live in. If the HCO you are considering does not pay the minimum wage, they are breaking the law and you should not hire them.

❑ Confirm that the agency pays overtime according to the law.

Nationally, homecare workers with very few exceptions, have the right to overtime pay after forty hours in a week. The overtime rate is 1.5x their hourly wage. Additionally, in California most homecare workers are entitled to 1.5x the hourly wage after 9 hours of work in a day, in addition to national right to overtime pay after 40 hours of work in a week. (For details on overtime rights, see Hand in Hand's CA Domestic Worker Overtime Rules at www.domesticemployers.org/CaliforniaResources.) All hours of the job must be counted and paid, including "sleep time." If the homecare worker is required to remain on the premises and is required to respond to the needs of the consumer, then they are working and must be paid those hours (even if it is at night and they can sleep during those hours).

Many agencies violate the law and don't pay their employees overtime. If the HCO you are considering is breaking the law by not paying their employees overtime or for all their hours worked, you should not hire them.

Note: Some agencies may bill the client/consumer for overtime hours. If you are in this situation, make sure that the money you are paying is getting passed along to the homecare worker.

Confirm that the HCO provides paid sick time according to the law.

In California, employees have the right to earn paid sick leave at the rate of one hour of paid sick time for every 30 hours worked. For more details on the law, see Hand in Hand's California Domestic Worker Employer Legal Responsibilities www.domesticemployers.org/CaliforniaResources.

Ask for the payment schedule and confirm that the agency pays its homecare workers on time.

Confirm with the homecare worker that the HCO is providing fair pay and benefits.

We recommend an hourly wage of at least \$18 as well as paid vacation, paid family leave, and an annual bonus in addition to the state's required minimum wage, paid sick leave, and overtime pay. For a full set of fair employment recommendations, see [Hand in Hand's Fair Care Homes page](#).

Once you have selected a responsible HCO, confirm with your homecare worker that they are receiving promised pay and benefits, are working sustainable hours, and are being treated fairly. If they are not, refer them to the CA Domestic Workers Coalition who can help guide them through next steps (<https://www.cadomesticworkers.org/>). You can also anonymously report the agency to the [California Homecare Agency Labor Violations Tipline](#), which collects data on private homecare agencies that are believed to be violating their employees' rights.

Be advised that if you advocate directly to the agency on behalf of the worker, it could lead to retaliation by the agency against that worker. Therefore it's better for you to support the worker to take action themselves.

Reliability for Worker and Consumer:

❑ **Reliability for the Worker:** Confirm that the HCO communicates schedule changes to their employees at least 24 hours in advance (sooner if possible) – with exceptions for emergencies. Homecare workers need to be able to schedule their own lives and, in many cases, childcare, so knowing their schedule in advance is essential.

❑ **Reliability for the Consumer:** Ensure the HCO has a protocol for managing emergency relievers in the case the regular homecare worker is sick or unable to fulfill their scheduled shift. Ask what the HCO does to provide consumers' with consistent back-up support staff to reduce the frequency that a consumer is supported by a new provider. Find out how the HCO orients back-up staff and ensures that the client knows how to contact the back up staff.

Quality of Care & Services: Safety & Skills:

❑ Ask how the agency screens their homecare workers to ensure they are safe (we recommend consulting former employers, observation periods and also criminal background checks).

❑ Ask what the agency does to protect the health and safety of its homecare workers and consumers including: providing homecare workers with sufficient personal protective equipment (PPE); training them on proper sanitation; safe lifting and moving for both the homecare worker and consumer; and handling bodily fluids.

❑ Confirm if the agency has a cap on homecare worker hours. We recommend that no homecare worker works longer than a 12 hour shift.

❑ Ask how the agency trains their homecare workers and verifies their skills.

Consumer Directed Support:

❑ Ask about the agency's philosophy on person-centered care. Confirm the agency has practices in place that ensure that the consumer and their family or long-term care planning team (if involved) set the goals and make the decisions related to their homecare, to the highest degree possible.

❑ Ask how the agency trains homecare workers on ableism and ageism, to ensure the homecare worker doesn't reinforce societal oppressions that devalue people with disabilities and older adults.

❑ Ask how the agency trains homecare workers on how to treat the consumer in a respectful way and to listen to what the consumer wants and needs.

❑ Clarify how homecare workers communicate about the consumer's care needs during shift changes. Ensure that the consumers' needs and wishes (as well as those of the long-term care planning team) are respected and that there is a continuity of support.

Resources:

On Consumer-Directed Care:

- [One Definition of Consumer-Directed Care Philosophy](#)
- [What's Next: A Self-Advocate's Guided Tour through Transition for Parents and Other Supporters](#)

On Workers' Rights

- [The California Domestic Workers Coalition](#)
- [California Homecare Agency Labor Violations Tipline](#)

On Domestic Employers Responsibilities:

- [Hand in Hand: The Domestic Employers Network](#)

**For feedback on this guide or if you want to learn more about our work to ensure that all seniors and people with disabilities get the support they need and all homecare workers have fair working conditions, please contact us at info@domesticemployers.org.*

