



# California Domestic Worker Employer Legal Responsibilities

Before hiring a domestic worker, you should understand your legal obligations under federal, state and local law. All workers are covered by California's wage and hour laws, regardless of immigration status.

The checklist below provides general information about wage and hour laws covering domestic workers in California hired directly by private households. It is not intended to provide legal advice.

Employers of domestic workers are strongly encouraged to provide additional benefits and protections beyond the minimums required by law.

## Who Are Domestic Workers?



### Domestic workers

Domestic workers work in private homes and are hired either directly by a family or through an agency. Domestic workers are nannies, childcare providers in private homes, homecare workers or attendants to people with disabilities and older adults,[1] housecleaners, cooks and gardeners.

### Personal Attendants

Under state law, someone who works in a private home and provides services such as supervising, dressing, or feeding an older adult, a child, or a person with a disability of any age, and who spends no more than 20% of their workweek on general housekeeping duties, like cleaning, cooking, laundry, or making beds, is considered a "personal attendant." A domestic worker is NOT considered a "personal attendant" if they spend more than 20% of their time on general housekeeping duties, like cleaning, cooking, laundry, or making beds.

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[1] Other terms for homecare worker include caregiver, personal care assistant, homecare attendant, home attendant, personal attendant, and home health aide.

## Companions

Under federal law, “companions” are homecare workers or caregivers who spend the majority of their time providing “fellowship and protection” to older adults and people with disabilities. This work includes activities such as spending time in conversation, reading, playing games, or accompanying the person on walks, errands, appointments or social events. Companions do not spend more than 20% of the workweek providing assistance with daily care activities like dressing/grooming, transferring, bathing, and meal preparation.

## Domestic Worker Category Chart

Category	Personal Care	General Housekeeping	Companionship
Personal Attendant	≥ 80%	< 20%	n/a
Not a Personal Attendant	< 80%	≥ 20%	n/a
Companion			> 80%

## Who Are Domestic Employers?

### Employee Status

Most workers in California are considered employees, including domestic workers. To treat a worker as an independent contractor, the hiring entity must demonstrate all of the following:

- A.** the worker is free from the hiring entity’s control and direction in the performance of the work;
- B.** the worker performs work that is outside the usual business of the hiring entity; and
- C.** the worker has their own business or occupation doing the same work as they do for the hiring entity.

If you cannot meet the ABC test above, your domestic worker is an employee under the law even if you issued 1099 tax forms and did not withhold taxes. There are some limited exceptions to this rule.

## What laws apply to domestic work?

Both federal and state laws provide coverage to domestic workers. Together, these laws provide overtime coverage to all domestic workers in California except casual babysitters. Below is a combination of federal and state overtime laws that reflects the greatest worker protections.



## Tax Laws

The Internal Revenue Service and the California Employment Development Department each require that employers and employees withhold payroll taxes if the total annual pay to the employee exceeds a certain amount each year. They also require that employers provide a W-2 form for their employees. [Federal tax law details](#) are posted on the Internal Revenue Service site, and the [California Employment Development Department has posted details on state tax law](#) online. Payroll companies can handle the taxes and withholding if you use their services.

## Wages & Overtime

**Employers must pay their employees at least the Minimum Wage for all Hours Worked**



- CA state Minimum Wage for employers with 25 or fewer employees:
  - \$15.50/hr (as of 1/1/2023)
- Some cities have a higher minimum wage. In cities where the minimum wage is higher, the employer is obligated to pay the highest rate.

- You may pay a worker a daily, weekly or monthly salary. However, the amount paid must equal at least the minimum wage for all hours worked. You are obligated to pay overtime based on the Regular Rate of Pay. (See below)
  - Regular Rate of Pay is calculated as follows:
    - If you pay on an hourly basis, the hourly rate is the Regular Rate of Pay.
    - If you pay a daily rate, calculate the Regular Rate of Pay by dividing the daily rate by 8 hours (for non-personal attendants) or by 9 hours (for personal attendants).
    - If you pay a monthly rate, calculate the Regular Rate of Pay by multiplying the monthly rate by 12, then divide by 52, then divide by the number of hours worked per week (not to exceed non-overtime hours).
  - You do not have to pay minimum wage to childcare providers under the age of 18, or to your parent, child or spouse.

### **Pay the Applicable Overtime**

- Domestic workers are entitled to overtime pay. Different overtime rules apply depending on the work performed and whether or not the employee lives in your home.
- Overtime rates are calculated using the Regular Rate of Pay and are either 1.5 times or 2.0 times the amount. (See above for how to calculate the Regular Rate of Pay.)
- For a full explanation, see CA Domestic Worker Overtime Rules.
- See Hand in Hand's sample work agreements for our recommended rate of pay.

# Hours & Pay Days

## Hours Worked

- All time that the employee is “under your control” or which you “suffer or permit” is considered hours worked and must be paid.
- In the instance where an employee is required to work a full 24-hour shift, or if the employee lives on the premises and is expected to respond to you or your family’s needs around the clock, all 24 hours are considered hours worked.
- Sleep time cannot be deducted from hours worked if the employee is “under your control,” meaning, they cannot leave and must respond to your needs.



## Set Regular Pay Days

- You must establish regular paydays and pay your employee at least twice a month.
- You must pay your employee on time and on regular paydays.
- You can pay in cash, by personal check or by electronic means.
- An employer must provide a pay stub or some written record at the time of payment that includes the number of hours worked, the rate of pay, the amount paid, paid sick leave accrued and used, and any deductions provided to the employee and kept for three years. There are some limited exceptions to this rule.

## Unpaid Wages or Vacation Time at Time of Employment Termination

- Your employee must be paid any wages and any unused vacation time due them on their final day of employment if they are discharged or have quit having given 72 hours’ notice, or within 72 hours if they quit without notice. (See other requirements at the time of termination below.)

# Paid Time Off

## Provide Paid Sick Leave

- 1 hour of sick leave is accrued (earned) for every 30 hours worked, from the start date of employment.
- Employees can use accrued sick leave 90 days after the date of hire.
- Employers can limit the use of sick leave to three sick days or 24 hours per year and may cap the accrual of paid sick leave at 48 hours, if they tell the employee they will limit it.
- Employees have the right to use sick leave in increments (i.e., they do not have to take the full day off).
- Any unused accrued sick time rolls over to the following year.
- Sick leave may be used for the following reasons:
  - To recover from a personal illness.
  - To attend a medical appointment (for preventive care or diagnosis, care or treatment of an existing health condition, including an annual physical or vaccination) for themselves or a family member.
  - To care for a sick family member.
  - To take time to address issues relating to domestic violence, sexual assault or stalking.
- Some cities have their own sick leave laws that may provide more leave. You must follow the law that provides the greatest benefit to the employee.



## **Provide Meal and Rest Breaks**

- Depending on the type of work required, you may be obligated to provide duty-free meals and rest periods.
- If your employee is considered a personal attendant (see definition above), you are NOT legally obligated to provide duty-free meals and rest periods.
- If your employee is a non-personal attendant domestic worker, you must provide duty-free meal and rest breaks as follows:
  - **Rest Breaks:**
    - Employees must be relieved of all duties. On-call or on-duty rest breaks are not permitted.
    - Employees have the right to a 10 minute paid break every 4 hours
      - ⇒ 3 ½ hrs to 6 hrs = 1 break
      - ⇒ 6 hrs to 10 hrs = 2 breaks
      - ⇒ 10 hrs to 14 hrs = 3 breaks
  - **Meal Breaks:**
    - Employees must be relieved of all duties.
      - ⇒ 30 minutes unpaid break after 5 hours of work
      - ⇒ 2nd meal break after 10 hours
      - ⇒ For shifts less than six hours, the employee may waive an unpaid meal break.
      - ⇒ “On-duty” meal periods may be allowed if the employee agrees and the nature of the work prevents them from being relieved of all duties. This agreement must be in writing and revocable at any time. The on-duty meal period must be paid. This is a very narrow exception.
      - ⇒ You must pay one additional hour of pay at the employee’s regular rate of pay for each workday the worker misses a rest or meal period.

## Meal and Lodging Credits

- You can count the value of lodging or meals you provide to meet your minimum wage obligations. However, you must have a written voluntary agreement with the employee that they agree to this arrangement before the work is performed.
- See Wage Order 15, subsection 10 on page 6 for the credit you can take.
- Meals provided must be an adequate, well-balanced serving of a variety of wholesome, nutritious foods.
- Lodging must be decent and sanitary, available for full-time occupancy, and the employee cannot be required to share a bed.

## Workers' Compensation

### Have Workers' Compensation Insurance

- An employee is covered by workers' compensation provided they have worked at least 52 hours within the 90-day period before the injury, and have earned at least \$100 within that 90-day period.
- Once they notify you of the injury, you must provide them with a workers' compensation claim form.
- Check with your insurance provider to ensure your homeowner's or renter's policy will provide workers' compensation coverage to employees working in your home. You will want to notify your policyholder that you employ a domestic worker.



# Record Keeping & Written Communication

## Maintain Records

### At Time of Hire

- Provide written notice to the employee about the:
  - Rate of pay and whether they will be paid by hour, shift, day, week, salary, or otherwise.
  - Rate(s) of overtime and when overtime pay will be paid.
  - How often they will be paid (i.e. Bi-weekly, semi-monthly).
  - Your name, address, phone number and the name, address, and phone number of workers' compensation insurance carrier.
  - How the employer will provide paid sick leave.
  - See the the Labor Commissioner's [sample Notice Form](#) that you can use with full notice details.
- Keep records for at least 3 years of the following:
  - Time records showing when the employee begins and ends each work period, meal periods, split shifts (i.e. if the employee works more than one shift in a day) and total daily hours worked.
  - Total wages paid each payroll period, including amounts charged by the employer for board and lodging.
  - Total hours worked in the payroll period and applicable rates of pay, including overtime hours and pay.
  - Paid Sick Leave accrued and used.



## Other Legal Protections

- **Immigration Status:** All workers regardless of immigration status are covered by California's wage and hour laws.
- **No Harassment:** All domestic workers have protection under California State law prohibiting harassment. An employer cannot verbally or physically harass an employee because of their gender, race, ethnicity, religion, sexual orientation and/or disability. For employers with five or more employees, the employer cannot discriminate against their employees because of these categories.
- **No Retaliation:** It is illegal for an employer to fire or threaten to fire a domestic worker for exercising their workplace rights, such as demanding minimum wage, filing a claim for unpaid wages or complaining about unsafe working conditions.
- **No Immigration Threats:** It is illegal for an employer to threaten to call or call immigration or the police on a worker for exercising their workplace rights. There are significant penalties for doing so.
- **Evacuation Orders:** An employer cannot require an employee to report to work in an area that is under an evacuation order.

## Obligations at End of Employment

- Usually employment in California is "at will". You may terminate or lay off your employee for any reason or no reason at all with a few exceptions such as a contract guaranteeing work for a specific time period, for retaliatory or harassing reasons prohibited by the law (see "Other Legal Protections" section).
- You are not usually required to give an employee advance notice of termination.
- If you terminate your employee, you must provide their final paycheck on the last day of employment.
- If your employee quits without providing notice, their final paycheck is due within 72 hours.
- If your employee quits and provides at least 72 hours' notice you must provide their final paycheck on the last day of work
- The final paycheck must include all owed wages including accrued vacation pay (unused sick time does not need to be paid out).

- If you do not provide your employee with all earned wages on their final day of work, you may be liable for a penalty calculated at the employee's daily wage rate times the number of days the pay is late, up to 30 days.
- You may also be liable for other penalties for failure to pay wages.



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**THE DOMESTIC**  
**EMPLOYERS NETWORK**

This document was created in consultation with the Women's Employment Law Clinic at Golden Gate University.

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