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. For example, the San Francisco minimum wage in 2016 is $13.00 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 was to expire or “sunset” on January 1,
2017. In 2016, the Governor signed SB 1015, removing the sunset provision and making the overtime rights permanent for personal attendants.

Since January 1, 2014, personal attendants are entitled to overtime protections (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

Certain categories of personal attendants are exempt 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

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 6th and 7th consecutive day;
- 2.0 x regular rate of pay for more than 9 hours on the 6th or 7th 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 ÷ 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 per month x 12 months = $19,200 per year.
  Divide by 52 weeks: $369.23 per week.
  Then divide by the number of weekly hours, not to exceed 40 ($369.23 per week/40 hours per week) = $9.23 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. If a domestic worker works a 24 hour shift, how many hours should she be paid?

If the employee is required to remain on the jobsite and under the control of the employer for the period of the shift, they must be paid for all 24 hours. If the employee is required to respond to the consumer’s needs around the clock, prohibited from leaving the premises, and cannot leave the consumer unattended or alone, then they are under the control of the employer and entitled to pay for all hours worked.

8. Can sleep be deducted when a domestic worker works a 24 hour shift?

No. The California Supreme Court in Mendiola v. CPS Security Solutions, Inc. held that employees required to spend time at their worksites and under the employer’s control are entitled to compensation for all hours, including sleep time, unless explicitly allowed by law. There is no sleep deduction that applies to domestic workers.

9. 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 took effect in 2015. Under certain circumstances, domestic workers may have stronger protection under federal law.

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 10 hours;
- 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 Jan. 2016):

<table>
<thead>
<tr>
<th>Meal Type</th>
<th>Lodging Description</th>
<th>Cost Per Period</th>
</tr>
</thead>
<tbody>
<tr>
<td>Breakfast</td>
<td>Room occupied alone</td>
<td>$3.62 per week</td>
</tr>
<tr>
<td>Lunch</td>
<td>Room shared</td>
<td>$4.97 per week</td>
</tr>
<tr>
<td>Dinner</td>
<td>Apartment: 2/3 of the ordinary rental value OR $564.81 per month, whichever is less</td>
<td>$6.68 per dinner</td>
</tr>
<tr>
<td></td>
<td>If a couple is employed by the employer, 2/3 of the ordinary rental value or $835.49 per month, whichever is less</td>
<td>$38.82 per week</td>
</tr>
<tr>
<td></td>
<td></td>
<td>$47.03 per week Room occupied alone: $47.03 per week</td>
</tr>
<tr>
<td></td>
<td></td>
<td>$564.81 per month Apartment: 2/3 of the ordinary rental value OR $835.49 per month, whichever is less</td>
</tr>
</tbody>
</table>

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 under California law. However, because of the new overtime obligation, 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.

**For free legal assistance or referral:** Call the Women’s Employment Rights Clinic at Golden Gate University School of Law – 415-442-6647. The Clinic can provide free consultation, information and referrals and in limited circumstances, can represent workers.