



CAREGIVER BLUE BOOK

The information in this booklet is provided for your consideration. The information is current as of the date it was written, but laws and circumstances change. The information and samples may not be appropriate to your situation. You should consult with an attorney to obtain advice regarding your matter before using the materials provided.

It is not possible to create a general guide that fits every individual situation. Hiring a caregiver correctly will typically involve an attorney to advise the client regarding the law, a payroll company or payroll specialist to handle payroll and mandatory payments to state and federal agencies, and possibly a trust and estates attorney to ensure adequate protection of trust assets and compliance with any fiduciary responsibilities to the care recipient and/or the trust.

DEFINITIONS REGARDING CAREGIVERS

The type of services performed by a caregiver can change which laws apply. The type of care will usually dictate the type of caregiver needed.

Personal Attendant (California Law, Wage Order 15 and Domestic Workers Bill of Rights)

“Personal attendant” means any person employed by a private householder or by any third-party employer recognized in the health care industry to work in a private household, to supervise, feed, or dress a child, or a person who by reason of advanced age, physical disability, or mental deficiency needs supervision. The status of personal attendant shall apply when no significant amount of work other than the foregoing is required. For purposes of this subdivision, “no significant amount of work” means work other than the foregoing did not exceed 20 percent of the total weekly hours worked.

“Supervision” includes assisting persons with the Activities of Daily Living (ADL). A personal attendant can spend the entire time assisting with ADLs.

May not include persons working through IHSS or similar state or county agencies, or if the person providing the services is the “parent, grandparent, spouse, sibling, child, or legally adopted child of the domestic work employer.”

Companion (Federal Law, Fair Labor Standards Act)

“Companionship services” means “the provision of fellowship and protection for an elderly person or person with an illness, injury, or disability who requires assistance in caring for himself or herself.” Companionship services may also include the provision of “care” if the care is provided “attendant to and in conjunction with the provision of fellowship and protection and if it does not exceed 20 percent of the total hours worked per person and per workweek.”

“Care” includes assisting persons with the ADLs. A companion cannot spend more than 20 percent of the total hours worked per workweek assisting with ADLs.

When a paid care provider is a family or household member of the person receiving home care services, the decision to hire the family or household member does not turn all care provided into employment.

NOTE: All companions are personal attendants, but not all personal attendants are companions

Domestic Work Employer (California Law, Domestic Workers Bill of Rights)

A “domestic work employer” is any person, including corporate officers or executives, who directly or indirectly, or through an agent or any other person, including through the services of a third-party employer, temporary service, or staffing agency or similar entity, employs or exercises control over the wages, hours, or working conditions of a domestic work employee.

OVERTIME REQUIREMENTS FOR CAREGIVERS

Work in a private home

Personal Attendant who is also a Companion:

Overtime after 9 hours in a day and after 45 regular hours in a week

Personal Attendant who is not a Companion:

Overtime after 9 hours in a day and after 40 regular hours in a week

Not a personal attendant or a Companion, and not a “live-in”:

Overtime after 8 hours in a day and after 40 regular hours in a week and for the 1st 8 hours on the 7th consecutive day worked during a workweek

Double time after 12 hours in a day and after the 1st 8 hours on the 7th consecutive day worked during a workweek

Not a personal attendant or Companion and is a “live-in”:

Overtime after 12 hours in day, provided the employee receives at least 3 total hours of uninterrupted time off during the 12-hour span, and receives 12 hours off every 24 hours

Overtime for the 1st 9 hours worked on the 6th and 7th consecutive days

Double Time after the 1st 9 hours worked on the 6th and 7th consecutive days

Work in a private facility

Overtime after 8 hours in a day and after 40 regular hours in a week and for the 1st 8 hours on the 7th consecutive day worked during a workweek

Double time after 12 hours in a day and after the 1st 8 hours on the 7th consecutive day worked during a workweek

NOTE: Employees working in facilities are not considered personal attendants or companions.

FORMS WHEN HIRING

Mandatory Forms

- Labor Code 2810.5 Notice to Employee
- W-4 Form: Employee Withholding
- I-9 Form: Employment Eligibility Verification
- Workers' Compensation Brochure, with Personal Chiropractor or Acupuncturist Designation Form and/or Personal Physician Designation Form
- Form DE 2515: Disability Insurance Pamphlet
- Form DE 2511: Paid Family Leave Pamphlet
- New Employee(s) Report: Form DE-34
- DE-4: California Employee Withholding Certificate
- Sexual Harassment Prevention Policy

Highly Recommended Forms

- Employment Agreement
- Job Description
- Workplace Posters
- Workplace Policies

NOTE: All employers are required to have workers' compensation insurance in place prior to hiring any employees. Many homeowners' policies automatically cover some workers' compensation claims, but they will not cover injuries occurring in the first few days of employment. It is safer and easier to get a workers' compensation rider on the homeowners' policy. Talk with your insurance broker or agent about recommended insurance policies.

SAMPLE LANGUAGE FOR EMPLOYMENT AGREEMENTS

At-Will

Employer hires Employee on an at-will basis under the terms and conditions set forth herein. This Agreement may be terminated at any time for any reason or no reason.

Duties

Employee is hired as a personal attendant to supervise, feed and dress Employer at Employer's residence. Employee's primary duty is to provide companionship services to Employer, including the provision of fellowship and protection, such as engaging in social, physical and mental activities such as conversation, reading, games, crafts, accompanying Employer on outings, on errands, to appointments or to social events, and to be present with Employer in Employer's home or to accompany Employer when outside of the home, and to monitor Employer's safety and well-being. Supervising Employer may require assisting him with bathing, showering, dressing, attending outings, preparing meals, obtaining medical care, shopping for groceries or personal items, using a telephone or performing light housework when such activities are related to the independent living of Employer and Employer cannot perform such activities alone. Employee is not to perform any housekeeping duties, except as they are related to the independent living of Employer, and then only on an occasional basis.

While Employee may make medications available to Employer and assist Employer with medication or provide assistance with medical devices as directed by Employer's medical professionals, Employee may not perform any medical services requiring a medical or nursing license.

Wages

In consideration for the services performed by Employee under this Agreement, the Employer will pay Employee at the rate of \$***per hour. Employee will be paid an overtime rate of \$**** per hour for all hours worked in excess of 9 hours per day or [40 or 45] regular hours per week.

NOTE: Never pay caregivers a daily, weekly or monthly rate. Always pay by the hour.

Breaks

Employee is required to take a paid ten-minute rest break for every four hours worked. If Employee's rest break is interrupted for any reason, Employee shall take the break at a later time.

Employee is entitled to a thirty-minute lunch break each day she works at least 5 hours. Due to the nature of the employment, Employee may be required to eat her meal with Employer during Employer's meal period when Employee is the sole person in charge of Employer. Employee agrees that the meals will be considered an on-duty meal period and Employee will be paid during this time. If Employee does not want to work an on-duty meal period she may notify the Employer so that Employer can secure a different caretaker for Employer during the meal period.

Meals and Lodging

Employee is being provided with meals and lodging while Employee is caring for Employer, but the meals and lodging are not part of Employee's compensation. Employee is not a tenant, and therefore is not entitled to any notice prior to terminating Employee's employment or lodging.

SAMPLE AGENCY INDEMNIFICATION CLAUSE

1. Representations and Warranties. [NAME OF CARE AGENCY] hereby represents and warrants that it complies with all federal, state and local labor laws, including but not limited to laws pertaining to the payment of wages, for all caregivers provided to clients.
2. Indemnification. In consideration of the payments received from the Client, [NAME OF CARE AGENCY] assumes entire responsibility and liability, and shall provide the costs of defense, for any claims or actions based on or arising out of services provided by [NAME OF CARE AGENCY]'s caregivers. [NAME OF CARE AGENCY] shall indemnify the Client and any persons acting on behalf of the Client, to the maximum extent permitted by applicable law, against all costs, charges and expenses incurred or sustained by the Client or any persons acting on behalf of the Client in connection with any claims, action, suit or proceeding in which the Client or any persons acting on behalf of the Client may be made a party by reason of receiving care from any [NAME OF CARE AGENCY] caregiver.

SLEEP TIME

State law currently requires employers to pay employees for all hours worked. This includes any hours when the employee is subject to the employer's control, even if the employee has the opportunity to sleep through the night. While federal law allows an employer in some situations to deduct for sleep time, the rule is generally inapplicable to most. California employers.

OTHER INFORMATION

Many government websites contain useful information regarding your responsibilities as an employer. Some useful sites include:

<https://www.dol.gov/whd/homecare/>

http://www.edd.ca.gov/payroll_taxes/am_i_required_to_register_as_an_employer.htm

<http://www.dir.ca.gov/dlse/DomesticWorkerBillOfRights-FAQ.html>

Certain cities and counties have enacted their own ordinances and regulations regarding employment within their boundaries. Be sure to check to see if your city has special minimum wage, health insurance coverage or paid time off requirements.

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