

Fact Sheet #25: The Home Health Care Industry Under the Fair Labor Standards Act (FLSA)

This fact sheet provides general information concerning the application of the [FLSA](#) to the home health care industry.

Characteristics

Employers who provide home health care services for individuals who (because of age or infirmity) are unable to care for themselves may or may not be required to pay [minimum wage](#) and/or [overtime](#) premium pay depending upon the type of services provided and the nature of the working relationship. Employees providing "companionship services" as defined by the FLSA need not be paid the [minimum wage](#) or [overtime](#). Trained personnel such as nurses, whether registered or practical, are not exempt from [minimum wage](#) or [overtime](#) under the exemption for companions, but registered nurses may be exempt as professionals. Certified nurse aides and home health care aides may be considered exempt from the FLSA's wage requirements depending upon the nature of their work. Please see [Fact Sheet #17N](#) for additional information on nursing exemptions.

Requirements

Persons employed in domestic service in households are covered by the FLSA. Nurses, certified nurse aides, home health care aides, and other individuals providing home health care services fall within the term "domestic service employment."

An employee who performs companionship services in or about the private home of the person by whom he/she is employed is exempt from the FLSA's [minimum wage](#) and [overtime](#) requirements if all criteria of the exemption are met. "Companionship services" means services for the care, fellowship, and protection of persons who because of advanced age or physical or mental infirmity cannot care for themselves. Such services include household work for aged or infirm persons including meal preparation, bed making, clothes washing and other similar personal services. General household work is also included, as long as it does not exceed 20 percent of the total weekly hours worked by the companion. Where this 20 percent limitation is exceeded, the employee must be paid for all hours in compliance with the minimum wage and [overtime requirements](#) of the FLSA.

The term "companionship services" does not include services performed by trained personnel such as registered or practical nurses. Registered nurses are exempt from the FLSA's wage requirements where their time is spent in the performance of the duties of a nurse and are paid on a salary or a "fee basis" as defined by Regulations, [29 CFR Part 541](#).

Individuals other than trained personnel (such as nurses) who attend to invalid infants and young children are considered companions, rather than babysitters, and their status may thus be within the companion exemption.

Covered domestic service employees who reside in the household where they are employed are entitled to the minimum wage but may be exempt from the Act's overtime requirements.

Typical Problems

An employee hired as a companion to an aged individual with a physical infirmity spends more than 20 percent of his/her time doing general household work. That person must be paid at least the [minimum wage](#) and one and one-half the regular rate of pay for hours in excess of forty in a workweek.

An employee who provides care and protection for minor children, where the children are not physically or mentally infirm, must be paid the [minimum wage](#) and proper [overtime](#) compensation. This activity would not constitute exempt companionship services.

Where to Obtain Additional Information

For additional information, visit our Wage and Hour Division Website: <http://www.wagehour.dol.gov> and/or call our toll-free information and helpline, available 8 a.m. to 5 p.m. in your time zone, 1-866-4USWAGE (1-866-487-9243).

This publication is for general information and is not to be considered in the same light as official statements of position contained in the regulations.

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