

Fact Sheet # 79A: Companionship Services Under the Fair Labor Standards Act (FLSA)

This fact sheet provides general information regarding the companionship services exemption under the FLSA.

Background

The FLSA is the federal law that establishes minimum wage, overtime pay, recordkeeping, and child labor standards affecting full-time and part-time workers in the private sector and in Federal, state, and local governments. The current Federal minimum wage is \$7.25 per hour. The Wage and Hour Division of the U.S. Department of Labor administers and enforces the FLSA with respect to domestic service employment performed in or about private homes.

In 1974, Congress extended FLSA coverage to workers who perform “domestic service.” Domestic service employment means services of a household nature performed by a worker in or about a private home (permanent or temporary). The term includes services performed by workers such as: companions, babysitters, cooks, waiters, maids, housekeepers, nannies, nurses, janitors, caretakers, handymen, gardeners, home health aides, personal care aides, and family chauffeurs. This listing is illustrative and not exhaustive.

The law also exempts certain domestic service workers from the FLSA’s minimum wage and overtime provisions. Casual babysitters and domestic service workers employed to provide “companionship services” for an elderly person or a person with an illness, injury, or disability are not required to be paid the minimum wage or overtime pay if they meet certain regulatory requirements described below.

Companionship Services

The Department of Labor amended its regulations to revise the definition of companionship services that are exempt from FLSA protection. Under the revised regulations, effective January 1, 2015¹, the term “companionship services” means the provision of **fellowship** and **protection** for an elderly person or a person with an illness, injury, or disability who requires assistance in caring for himself or herself. Such individuals are sometimes referred to as “consumers” in this fact sheet. The term “companionship services” also includes the provision of care, when the care is provided attendant to and in conjunction with the provision of fellowship and protection, and does not exceed 20 percent of the total hours worked per consumer and per workweek.

Fellowship and Protection

- The provision of “fellowship” means to engage the person in social, physical, and mental activities, such as conversation, reading, games, crafts, accompanying the person on walks, on errands, to appointments, or to social events.
- The provision of “protection” means to be present with the person in their home, or to accompany the person when outside of the home, and to monitor the person’s safety and well-being.

¹ See Fact Sheet #25: The Home Health Care Industry Under the Fair Labor Standards Act (FLSA) for information on the current “companionship services” exemption applicable until January 1, 2015.

Care

The provision of “care” means assisting the person with:

- *Activities of Daily Living* (ADLs) such as dressing, grooming, feeding, bathing, toileting and transferring;
and
- *Instrumental Activities of Daily Living* (IADLs) which are tasks that enable a person to live independently at home, such as meal preparation, driving, light housework, managing finances, assistance with the physical taking of medications, and arranging medical care.

The companionship services exemption is not applicable when the employee spends more than 20 percent of his or her workweek performing care services; in such workweeks, the employee is entitled to minimum wage and overtime pay.

Tasks That Are Not Companionship Services

Household work: The term “companionship services” excludes domestic services performed primarily for the benefit of other members of the household. Household work that primarily benefits other members of the household, such as making dinner for the entire family or doing laundry for another member of the household, results in a loss of the exemption, and the employee is entitled to minimum wage and overtime for that workweek.

- For example, if an employee provides fellowship and protection for an elderly person Monday through Thursday, but spends Friday exclusively performing housework for the household as a whole, then the exemption is lost for the workweek. The employee cannot perform general household services for the entire household and still maintain the companionship services exemption during that workweek. In this example, the employee must be paid not less than the Federal minimum wage for all hours worked and overtime pay at time and one-half of the regular rate of pay for all hours worked over 40 in a workweek.

Medically related services: The definition of companionship services does not include the performance of medical tasks which typically require training and are performed by medical personnel such as registered nurses, licensed practical nurses, or certified nursing assistants. The determination of whether a task is medically related is based on whether the services *typically* require and are performed by trained personnel, and is not based on a worker’s actual training or occupational title. Direct care workers who perform these services are excluded from the companionship services exemption. The performance of any medically related services that typically require training results in a loss of the exemption during the workweek in which they are performed. In such a case, the minimum wage and overtime pay requirements apply to all hours worked during the workweek.

- Medically related services that typically require training by medical personnel include invasive or sterile procedures, or procedures that otherwise require the exercise of medical judgment; examples include but are not limited to catheter care, turning and repositioning, ostomy care, tube feeding, treating bruising or bedsores, and physical therapy.

Who Can Claim the Exemption?

Under the revised regulations, the exemption is only available to the individual, family, or household solely or jointly employing the worker, and only if the companionship services duties test set forth above is met.

Third party employers of direct care workers (such as home care staffing agencies) are not permitted to claim the exemption for companionship services. Third party employers may not claim the exemption even when the employee performs companionship services and is jointly employed by the third party employer and the individual, family, or household using the services. Accordingly, third party employers must pay their workers the Federal minimum wage for all hours worked and overtime pay at time and one-half of the regular rate of pay for all hours worked over 40 in a workweek.

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 Department's regulations.

U.S. Department of Labor
Frances Perkins Building
200 Constitution Avenue, NW
Washington, DC 20210

1-866-4-USWAGE
TTY: 1-866-487-9243
[Contact Us](#)