

**A Guide to Understanding the Minimum Wage and
Overtime Laws for Household Employers**

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**A leading household payroll service provider in the
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In June 2007, the United States Supreme Court ruled that the US Department of Labor's (DOL) regulation exempting employers of home care companions from both the minimum wage and the overtime (OT) requirements of the federal Fair Labor Standards Act (FLSA) is a permissible interpretation of the FLSA. ¹

This decision, however, will have little impact on employers of home care companions in New Jersey and New York because the wage-hour laws in those two states are more stringent and require that home care companions be paid at least the minimum wage and OT. (As will be explained below, there is a slight twist under New York law regarding OT and under New Jersey law regarding minimum wage.)

In Connecticut, the Connecticut Department of Labor follows the federal rules when it comes to the minimum wage and overtime requirements applicable to domestic service employment.

As a general rule, in the area of wage-hour law, a law that is more beneficial to the employee (by providing a higher benefit) is applied regardless of whether it is a state or federal law.

This article outlines the applicable wage-hour rules relating to the payment of the minimum wage and OT to home care companions under federal, Connecticut, New Jersey, and New York laws. It reflects the state of the law as of January 1, 2009.

Federal Law

Section 13(a)(15) of the FLSA exempts from the statute's minimum wage and maximum hours rules

*any employee employed on a casual basis in domestic service employment to provide babysitting services or any employee employed in **domestic service employment** to provide **companionship services** for individuals who (because of age or infirmity) are unable to care for themselves (as such terms are defined and de-limited by regulations of the Secretary [of Labor]).²*

The DOL regulations state that

*the term **domestic service employment** refers to services of a household nature performed by an employee in or about a private home (permanent or temporary) of the person by whom he or she is employed. The term includes employees such as cooks, waiters, butlers, valets, maids, housekeepers, governesses, nurses, janitors, laundresses, caretakers, handymen, gardeners, footmen, grooms, and chauffeurs of automobiles for family use. It also includes babysitters employed on other than a casual basis. This listing is illustrative and not exhaustive.³*

The DOL further defines the term "companionship services" for the aged or infirm to mean

those services which provide fellowship, care, and protection for a person who, because of advanced age or physical or mental infirmity, cannot care for his or her own needs. Such services may include household work related to the care of the aged or infirm person such as meal preparation, bed making, washing of clothes, and other similar services. They may also include the performance of general household work: Provided, however, That such work is incidental, i.e., does not exceed 20 percent of the total weekly hours worked.

The term "companionship services" does not include services relating to the care and protection of the aged or infirm which require and are performed by trained personnel, such as a registered or practical nurse. While such trained personnel do not qualify as companions [under FLSA §13(a)(15)], this fact does not remove them from the category of covered domestic service employees when employed in or about a private household [who might otherwise be exempt from OT pay, but not minimum wage requirements, under FLSA §13(b)(21) (live-in domestic services employees)].⁴

The DOL has interpreted FLSA §13(a)(15) to extend to companionship workers **including** those “who are employed by an employer or agency other than the family or household using their services”.⁵ It is this interpretation that the Supreme Court upheld in the Long Island Care case.

The DOL has extensive regulations dealing with domestic service employment, including provisions defining and limiting the terms “babysitting services” and “companionship services”.⁶ There is a second FLSA exemption, relating just to overtime, for **live-in** domestic services employees. See FLSA §13(b)(21) and DOL regulations there under⁷ that are excluded from the overtime requirement. The term **live-in** means that the domestic employee sleeps and resides there.

Connecticut Law

There is no law or regulation in Connecticut that expressly exempts workers in domestic service employment from entitlement to receive at least the minimum wage and OT. Nonetheless, the Connecticut Department of Labor follows the federal minimum wage and overtime exemptions for such workers, based on its reading of the definition of “employee” in the Connecticut wage-hour law.⁸

New Jersey Law

New Jersey does NOT have a home care companion exemption from an employer’s obligation to pay the minimum wage and OT. Thus, such workers are entitled to at least the minimum wage and 1 ½ times the employees’ regular hourly wage for OT hours in New Jersey.

However, New Jersey does have an exemption from the minimum wage for part-time employees engaged in the care and tending of children in the home of the employer.⁹

New York State Law

All employees are required to be paid at least the minimum wage of \$7.15 per hour. New York follows the FLSA **overtime** exemptions for home care companions, but with a twist. In New York, overtime hours must be paid at no less than 1 ½ times the NY state minimum wage. Overtime hours do not have to be paid at the usual 1 ½ times the employee’s regular hourly wage if that rate is higher than the NY state minimum wage.¹⁰

Employee Paid \$10.00 Per Hour	Employee Paid \$11.00 Per Hour
Does it pass time and a half test: NO	Does it pass time and a half test: YES
\$7.25 per hour plus 3.58 per hour is \$10.88, less than the employee’s base pay rate	\$7.25 per hour plus 3.58 per hour is \$10.88, more that the employee’s base pay rate
Action: Employee Must Be Paid Overtime at a minimum of \$10.88 per hour.	Action: Employee is not required to be Paid Overtime.
Employees must still be paid for all hours worked. These illustrations relate to the pay rate used to determine the employee’s gross hourly pay.	

Additionally, home care companions are NOT exempt from New York’s minimum wage and overtime requirements.¹¹

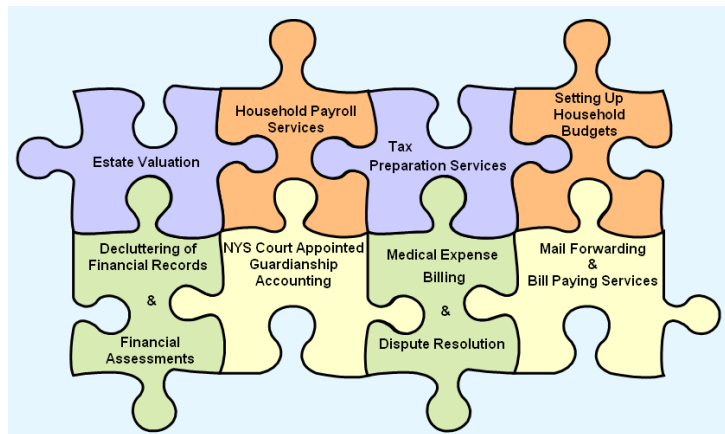
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About Redlig Financial Services:

Redlig Financial Services serves the needs of busy families, small businesses, expatriates and the elderly throughout the New York area. We provide a wide range of personal assistance to clients, who want help with their financial affairs, or those of a loved one. They include household and small business payroll services, income tax preparation and filing, daily money management and bill paying, medical expense billing and dispute resolution, and all other aspects associated with family finances.

Our payroll system is unique and really one of a kind. It was specifically designed for households and small businesses that take the complexity of payroll and automating all aspects of the process. With our service, everything is electronic, from the withdrawal of funds from the employer's account to the direct deposit of funds into the employees account. All monthly, quarterly and year-end tax forms with the Federal and State tax authorities are performed electronically as well. That translates into less paperwork and minimal time on your behalf.

It's all part of our role as Trusted Financial Advisor. While our services are broad and diverse, it is purposely designed to meet the needs of complicated family financial issues. While it is clear that not everyone needs all of our services, our business model is built around picking the right services to complete your specific financial puzzle and then add to it as needed.



For more information on our services, please feel free to visit us online at www.redlig.com. With offices conveniently located in White Plains, NY and Midtown Manhattan, please feel free to contact us at 914-946-7725 or email me directly at egilder@redlig.com.

[1] Long Island Care at Home Ltd. v. Coke, U.S., No. 06-593 (June 11, 2007), available at <http://www.supremecourt.us/opinions/06pdf/06-593.pdf>.

[2] FLSA §13(a)(15), 29 USC §213(a)(15) (emphasis added), available at http://www.law.cornell.edu/uscode/html/uscode29/usc_sec_29_00000213----000-.html.

[3] 29 CFR §552.3 (emphasis added), available at http://www.dol.gov/dol/allcfr/Title_29/Part_552/29CFR552.3.htm

[4] 29 CFR §552.6 (formatting added), available at http://www.dol.gov/dol/allcfr/Title_29/Part_552/29CFR552.6.htm.

[5] 29 CFR §552.109(a), available at http://www.dol.gov/dol/allcfr/Title_29/Part_552/29CFR552.109.htm.

[6] See http://www.dol.gov/dol/allcfr/Title_29/Part_552/toc.htm

[7] FLSA §13(b)(21), 29 USC §213(b)(21) ("any employee who is employed in domestic service in a household and who resides in such household"), available at http://www.law.cornell.edu/uscode/html/uscode29/usc_sec_29_00000213----000-.html ; and 29 CFR 552.102, available at http://www.dol.gov/dol/allcfr/Title_29/Part_552/29CFR552.102.htm

[8] See Conn. Gen. Stat. §31-58(f), available at <http://www.cga.ct.gov/2007/pub/Chap558.htm#Sec31-58.htm>.

[9] See NY Jersey Administrative Code 12:56-3.2(a)(4), available at http://wd.state.nj.us/labor/wagehour/lawregs/wage_and_hour_laws_regulations.html#5632

[10] See <http://www.labor.state.ny.us/workerprotection/laborstandards/faq.shtm#4>

[11] See <http://www.dol.gov/elaws/esa/flsa/screen75.asp> for a complete listing of exemptions