

Domestic Work: Employer Obligations



Am I an Employer?

In California, all workers are considered employees unless the hiring person or entity can prove otherwise.

There are multiple factors considered under the law but the main focus will be:

- Did you hire the worker?
- Do you pay the worker?
- Do you set the schedule?
- Did you set the rate of pay?
- Do you tell the worker how to perform her job?

If you answered "yes" to ANY of these questions, you will be considered an employer under California law.

Under California law, more than one person or entity can be the employer. Therefore, even if you use a home care agency to hire the worker, you may be considered a joint employer if you exercise – even indirectly – any control over the worker's hours, wages or how the worker performs her job.

The worker cannot be classified as an independent contractor just because:



The worker is a temporary or part-time worker.



The worker is being paid cash.



The worker is being issued a 1099 tax form.



The worker agrees to be an independent contractor.

Employer Obligations at Time of Hire

1. Written Wage Notice

At the time of hire, you must provide a written notice, in the language you normally use to communicate, to your caregiver with the following information:

- a. How much you will be paying them (their rate of pay).
- b. Whether you are paying them by the hour, shift, day, week, or salary.
- c. When you will pay them.
- d. Your name, address and phone number.
- e. The contact information of your workers' compensation insurance carrier.*

**Most homeowner policies automatically cover some workers' compensation claims. You should talk to your insurance company about the scope of coverage for domestic service employee(s) and whether you need to add a workers' compensation rider on your policy.*

Sample Notice: https://www.dir.ca.gov/dlse/LC_2810.5_Notice.pdf.

2. Tax/Immigration Forms

[Topic No. 756 Employment Taxes for Household Employees | Internal Revenue Service \(irs.gov\)](#)

https://edd.ca.gov/en/payroll_taxes/Household_Employer

The IRS and California Employment Development Department has guidance on employment taxes for household employees. You will be required to pay taxes if you pay a certain threshold amount in a calendar quarter to your domestic service employee. You can also hire a payroll company or an accountant to handle the taxes and payroll for your caregiver. You have to fill out or provide the employee the following forms:

➔ Report Household Worker: DE1 HW

https://edd.ca.gov/siteassets/files/pdf_pub_ctr/de1hw.pdf

You are required to register your Household Worker with the California Employment Development Department (EDD) within 15 days after you pay the taxable threshold wages. Once you register, EDD will provide you with notices and pamphlets to provide your employee such as state disability insurance and paid family leave (if you meet the threshold wages amount to be subject to these taxes).

→ Employee Withholding Forms:

W4 (Federal): <https://www.irs.gov/forms-pubs/about-form-w-4>

DE-4 (State): https://edd.ca.gov/siteassets/files/pdf_pub_ctr/de4.pdf

You are required to pay federal and state taxes if you meet the taxable threshold wages. The W4 and DE-4 forms allow you to determine how much taxes you need to withhold from your caregiver's paycheck.

→ I-9 Form: Employment Eligibility Verification:

<https://www.uscis.gov/i-9>

You must verify that each new employee is legally eligible to work in the United States or face a civil fine. You cannot request more or different documents, reject reasonably genuine-looking documents or request certain documents over others than what is listed on the I-9 form. It is illegal to discriminate or retaliate against individuals on the basis of national origin, citizenship, or immigration status.

Employer Obligations Throughout Worker's Employment

✓ Pay Minimum Wage for all hours worked:

https://www.dir.ca.gov/dlse/FAQ_MinimumWage.htm

Be sure to check if your city has a higher local minimum wage rate. You must pay the highest rate.

If you have live-in employees, you can take a credit for lodging and meals if certain conditions are met.

✓ Pay Overtime Pay:

What your overtime obligations are depends on who hired the worker and what the worker is doing. Because the overtime laws are complex, visit the 360° Caregiving Rights Toolkit for additional resources and use the [CDWC Overtime Tool](#).

✓ Set Regular Paydays: At least twice a month.

✓ Provide Paid Sick Leave: for every 30 hours worked, the worker gains 1 hour of paid sick leave. You can limit the use to 3 days/24 hours in a calendar year.

✓ Have Workers Compensation Insurance: most homeowner's/renter's policies provide coverage for domestic service employees.

✓ Record-keeping: Best practice is to keep records of actual hours worked, sick leave hours, total wages paid each payday. Keep records for at least 4 years.

Employment Contract

While not required by law, it is best practice to enter into a written employment agreement with your caregiver. The contract should be entered into before any work begins and modified if there are any significant changes to the employment relationship.

At a minimum, the contract should have the following terms:

- Rates of pay
- Schedule, breaks, and total hours
- Duties: Be specific.
- Benefits, if any
- Length of contract or at-will language: Generally, most employment contracts are at-will, which means that the employer or the employee can terminate the relationship at any time. If you want a different type of contract, you can add a notice requirement or specifying a certain length of time for the contract.

Sample contract: <https://domesticemployers.org/resource/attendant-care-employment-contract/>



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www.ggu.edu/law/werc

360° Caregiving Rights Toolkit*

*Funding for this project was provided by Metta Fund

Metta Fund