



## **FLSA FAQ – Based on Department of Labor (DOL) Guidance**

**Created by Consumer Direct Colorado and approved by  
Colorado Department of Health Care Policy and Financing (HCPF)**

Regardless of the service option; agency-based, In Home Support Services (IHSS) or Consumer Directed Attendant Support Services (CDASS), minimizing risk is a joint effort between the client or Authorized Representative and providers. This Fair Labor Standards Act (FLSA) information sheet has been created to highlight the features and responsibilities associated with in the CDASS model. It is intended to assist clients and Authorized Representatives to understand the responsibilities and requirements to employers under the FLSA.

Likewise, clients and Authorized Representatives have the responsibility to follow CDASS rules, FMS Provider policies and procedures, and employment regulations. These are put in place to provide protection to the client or Authorized Representative, attendants, and the CDASS program.

The following Frequently Asked Questions have been compiled by Consumer Direct Colorado to assist clients and Authorized Representatives. Please note, Consumer Direct Colorado cannot provide tax advice or legal advice. Advice from a tax professional or a lawyer regarding individual situations is recommended.

### **1. Q: What is the Fair Labor Standards Act (FLSA)?**

**A:** FLSA is the Federal Law that requires employers to pay employees, minimum wage and overtime. This includes domestic services employees.

“Domestic Service Employment” means services of a household nature performed by an employee in or about a private home.

### **2. Q: What are my requirements as the employer to pay attendants for sick time, paid vacations, and holidays?**

**A:** In CDASS, clients may elect to set different rates of pay for shifts that fall on holidays, weekends etc. if they would like. CDASS budgets are not built with funds to pay for sick time, unworked holidays and paid vacations. Timesheets may only be submitted to FMS providers for hours worked.

### **3. Q: Are there any exemptions from the FLSA Overtime requirements?**



**A:** There are two exemptions under FLSA an employer may claim should all of the criteria be met. These are known as “**Live-in Domestic Service Employee Exemptions**” and “**Companionship Services Exemption**”

Because CDASS is a task based service, the Companionship Exemption **DOES NOT** apply due to the definition established by DOL.

### **Live-in Domestic Service Employee Exemptions**

To be a “live-in” home care worker, the employee must either live at the consumer’s home full-time (that-is, have no other home of their own), or spend at least 120 hours or five consecutive days or nights in the consumer’s home per week.

A live-in home care worker could be a family member of the consumer or a provider who moved into a consumer’s home as part of a shared living arrangement. Workers who come to a consumer’s home for 24-hour shifts but are not present for at least 120 hours each week or for five consecutive days or nights are not live-in workers.

Employees who do not meet this definition are not considered live-in domestic service workers and must be paid at least the federal minimum wage for all hours worked and overtime pay at one and a half times the regular rate of pay for all hours worked over 40 in a workweek.

- Workers who work temporarily for the household for only a short period of time, such as two weeks, are not considered live-in domestic service workers, because residing on the premises of the household implies more than temporary activity. The employer, in this care, cannot claim the overtime pay exemption and must pay overtime at one and a half times the regular rate of pay for all hours worked over 40 in the workweek.
- Workers who work 24-hour shifts but are not residing on the employer’s premises “permanently” or for “extended periods of time” are not considered live-in domestic service workers and, thus, the workers must be paid overtime at one and a half times the regular rate of pay for all hours worked over 40 in the workweek.

*See Wage and Hour Division Fact Sheet 79B, Live-in Domestic Service Workers Under the FLSA, for more information about live-in home care workers and how they must be paid.*

[www.dol.gov/whd/homecare/factsheets.htm](http://www.dol.gov/whd/homecare/factsheets.htm)

[http://consumerdirectco.com/wp-content/uploads/2014/12/homecare\\_guide\\_20160331.pdf](http://consumerdirectco.com/wp-content/uploads/2014/12/homecare_guide_20160331.pdf)



**4. Q: What is my requirement for Overtime Pay under the FLSA regarding Sleep Time for my attendants?**

**A:** This can depend on many factors such as whether or not the employee is a live in caregiver or not, and how many hours are in their scheduled shift. The chart below summarizes the sleep time rules for each category of worker. Additional information about these requirements is available at [Work Hours | U.S. Department of Labor \(dol.gov\)](https://www.dol.gov/work-hours).

	Live-in employee		Shifts of 24 hours or more	Shifts of fewer than 24 hours
	Extended periods of time	Permanent		
<b>Requirements for excluding an employee's sleep time from hours worked</b>	<ul style="list-style-type: none"> <li>Reasonable agreement to exclude sleep time</li> <li>Employer must provide private quarters in a homelike environment</li> </ul>		<ul style="list-style-type: none"> <li>Employer provides adequate sleeping facilities</li> <li>Employee can usually enjoy an uninterrupted night's sleep (5 consecutive hours)</li> <li>Express or implied agreement to exclude sleep time</li> </ul>	Sleep time may not be excluded
<b>Maximum number of hours that can be excluded</b>	Up to 8 hours per night as long as the employee is paid for at least 8 hours during the 24-hour period	Up to 8 hours per night as long as the employee is paid for some other hours during the workweek	Up to 8 hours, in a fixed period, in each 24-hour shift	Sleep time may not be excluded
<b>Limitations on exclusion on a particular night</b>	<ul style="list-style-type: none"> <li>Any interruption to sleep time must be paid</li> <li>If during any night the employee does not get reasonable periods of uninterrupted sleep totaling at least 5 hours, the employer may not exclude any sleep time</li> </ul>			

Source: Fact Sheet # 79D: Hours Worked Applicable to Domestic Service Employment Under the Fair Labor Standards Act (FLSA) <https://www.dol.gov/whd/regs/compliance/whdfs79d.pdf>