



# Your Homecare Legal Update for 2017, 2018 and Beyond

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# Ground Rules

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- Let me sound like a lawyer . . .
- Disclaimer: Information, not legal advice



# Federal and Other Laws

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- This is a discussion of federal law
- However state and local laws also will apply to your business
- Whichever law benefits the employee the most applies



# Top Federal Legal Issues

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- Minimum Wage
- Overtime
- Sleep Time
- Travel Time
- On Call Time



# Federal Minimum Wage

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- The current federal minimum wage is \$7.25 per hour
- State, country and city minimum wages can be higher and those will apply



# Federal Overtime

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- 1.5 times the regular rate for all hours worked above 40 in a week
- Applies to all third party employers
- There is no federal daily overtime



# Federal Overtime

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- Retroactive danger!
- Four district courts have held that CG ot applied as of 1/1/15, not 10/13/15



# Federal Overtime

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- For families, if the caregiver spends more than 20% of her time on actual work, the family must pay overtime
- Only caregivers who are just companions will be exempt, and that's not the reality for most caregivers





# Federal Overtime

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- Specifically, for families, federal regulations limit scope of duties to “protection and fellowship”
- 20% would include
  - Laundry
  - Running errands
  - Bathing
  - Meal prep unless caregiver eats with client

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# Federal Overtime

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- Federal rules render the exemption meaningless to direct employers as well
- Thus, virtually everyone must pay federal overtime to caregivers



# Federal Overtime

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- Technically live-in caregivers employed by families will be exempt from all federal overtime
- However, “live-in” means to reside on the premises and have access to lodging even when not working



# Federal Overtime

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- This isn't the case for most caregivers
- If a family does have live-in caregivers, the family must keep accurate records of actual hours worked



# Federal Overtime

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- That means caregivers must record sleep and any unpaid, non-working break times
- Can't just assign sleep during set hours
- Live-in exemption is only from overtime, not from minimum wage, and only for families



# Federal Overtime

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- The federal overtime requirement applies to agencies and, as a practical matter, to most families
- Thus, there is no savings on the hourly wages paid for a family to hire directly



# Federal Overtime

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- Benefit: Unless you're adhering to a state exemption, you don't need to limit caregivers' job duties to comply with 80/20 rule



# Federal Overtime – Other Issues

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- Be careful of “weighted” overtime
- If you pay multiple rates to the same caregiver in the same work week, then you must calculate blended straight time rate to determine appropriate overtime rate
- Very complicated





# Federal Overtime – Exempt Employees

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- Overtime rules for exempt employees are on hold

# Sleep Time

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- Federal law allows for the deduction of sleep time under certain conditions
- State laws may not, which means that you can't deduct it



# Sleep Time

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- To deduct sleep time
  - Must provide adequate sleeping facilities
  - Only on 24 hour shifts
  - Maximum of 8 hours
  - Must get 5 uninterrupted hours of sleep
  - Must pay for all hours worked during sleep time

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# Sleep Time

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- Must be paid for any work during sleeping period
- Must receive at least five consecutive hours of sleep time – if not you must pay the caregiver for the entire 24 hours



# Sleep Time

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- Caregivers should clock out and back in for sleep time
- Helpful to have records of paying caregivers during sleep time and paying for an entire shift if the caregiver doesn't get five consecutive hours of sleep



# Sleep Time

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- Has nothing to do with the number of interruptions during the night
- Deduction is document intensive, hard to monitor, expensive and complicated
- Easier to pay for all 24 hours, but that could price you out of the live-in market

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# Travel Time Between Jobs

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- Generally commuting time to and from work isn't compensable
- But must pay for travel time as hours worked when the caregiver travels between clients in the same work day – 29 C.F.R. 785.38



# Travel Time Between Jobs

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- Easiest and most conservative way for caregiver to log travel time just like work time
- Could use online service to map commuting time and have caregiver notify if you commuting time was greater than online estimate





# On Call Time

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- If at all possible, staff exempt employees for on call
- As long as employee maintains exemption, then you don't have to worry about on call issues
- Call centers



# On Call Time

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- For non-exempt employees, must pay for all time worked during on call
- May have to pay for entire on call time if work or restrictions are significant



# On Call Time

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- Should pay hourly
- Avoid on call stipends or flat rates
- Be careful of weighted overtime issues



# What Federal Law Doesn't Require

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- Paid holidays
- Vacation or sick days
- Extra pay for holidays, nights or weekends
- Health insurance for employers with fewer than 50 employees



# What Federal Law Doesn't Require

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- Doubletime
- Meal or rest periods
- Severance

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# What Federal Law Doesn't Require

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- There is also no limit on the number of hours, days or weeks worked
- However, certain jurisdictions may require
  - Paid sick days
  - Health insurance
  - Higher minimum wages



# Arizona Prop 206

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- Minimum wage increase
  - \$10.00/hr on 1/1/17
  - \$10.50/hr on 1/1/18
  - \$11.00/hr. on 1/1/19
  - \$12.00/hr. on 1/1/20
  - After 2020 cost of living increases
- Flagstaff: \$12/hr. as of 7/1/17

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# Arizona Prop 206

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- Paid Sick Leave as of 7/1/17
  - Accrue 1 hr. for every 30 hrs. worked
  - Employers w/15 or more employees can cap use and accrual at 40 hrs. of paid sick leave per year
  - Can use leave for own or family member's illness or reasons re domestic or sexual violence or stalking

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# Arizona Prop 206

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- Other Requirements
  - Most post a notice
  - Maintain records for four years
  - Paystub notice w/amount of leave available, taken and amount in pay
  - Employers can require reasonable documentation if employee takes three or more consecutive paid sick days

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# Arizona Prop 206

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## ○ Other Requirements

- Employees hired before 7/1/17 can use leave immediately
- Employer can make those hired after 7/1/17 wait 90 days before *using* leave but employee begins to *accrue* leave immediately



# Arizona Prop 206

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- Other Requirements
  - Can't require employee to find replacement worker
  - Can't count use of leave for discipline or termination purposes



# Arizona Prop 206

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- Other Requirements
  - Not required to pay unused sick time at termination
  - If re-hire employee within 9 months, must reinstate paid sick leave and employee can use immediately



# Questions

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- Feel free to contact our firm:
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- Or visit our Web site:  
[www.legallynanny.com](http://www.legallynanny.com)

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# Questions

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