California 6th and 7th Day Overtime – Paying It Right

Riddle: When might paying your home health aides in compliance with FLSA overtime requirements not be enough to protect you from penalties and damages in a

Published August 31, 2021



Riddle: When might paying your home health aides in compliance with FLSA overtime requirements not be enough to protect you from penalties and damages in an overtime compliance audit? **Answer**: When your aides are working in California! If the above riddle leaves you stymied or dreading staying on top of California overtime rules, read on. **The Whole Truth About Overtime** Under the Federal Fair Labor Standards Act (henceforth FLSA), employers must pay their employees overtime (OT) at a rate of 1.5 times their " regular rate" if they work more than 40 hours in one workweek. In addition to this federal law, some states have their own requirements when it comes to overtime. And whenever there are overlaps or contradictions between federal and state law, the rule is that you must always pay your workers the higher amount. When it comes to home health aides (HHAs) working 6 or 7 days in a row, special rules kick in in California (and in New York). Let's take a look at how they work: **California 6th and 7th Day Overtime Requirements** Under Wage Order #15 for "household

occupations" in California, certain aides are entitled to time-and-a-half for working 7 consecutive days. Other aides are entitled to double time (2 times their regular rate) for working 6 or 7 consecutive days. And still others are not entitled to any special California premium for working 7 consecutive days. Sound like we're back to riddles? Let's clear it up with some definitions: California distinguishes between aides who are personal attendants and aides who are non-personal attendants. A personal attendant is anyone employed by a private householder **or health care agency** to work in a private household to supervise, feed, or dress a child or elderly or disabled person needing supervision. Although standard California daily overtime takes effect after working more than 8 hours in a day (check out some great information about that from SHRM), personal attendants aren't entitled to overtime at time-and-a-half until they've worked more than 9 hours in a day (**but personal attendants are not entitled to 7th day overtime in California)**. What if your aide also performs a significant amount of work other than supervising, feeding, and dressing the child or elderly or disabled person? Then they lose their status as a personal attendant and are now dubbed a non-personal attendant (NPA). And here's where the 7 th day overtime starts. **Non-personal attendants who don't live in the household where they work** are entitled to overtime for the first 8 hours they work on the 7 th consecutive day in a workweek. They're also entitled to double time for any hours over 8 worked on that 7 th consecutive day. Note that the above has nothing to do with working 40 hours in that workweek. So let's take an example: Georgette, an NPA who doesn't live in, works 2 hours a day, Sunday through Friday. That's altogether 12 hours. Then on Saturday, she works a case for 10 hours. Her total weekly hours are only 22 – not enough for federal overtime rules to kick in. But in California, you're required to pay Georgette 8 hours at time-and-a-half and 2 hours at double time for that 7 th day worked. There's still more. **Non-personal attendants who live in the household where they work** are entitled to overtime for the first 9 hours they work on the 6 th *and* 7 th consecutive days in a workweek. They're also entitled to double time for any hours over 9 worked on those 6 th and 7 th consecutive days. So let's look at another example. George, an NPA who lives in, works 2 hours a day, Sunday through Thursday. That's altogether 10 hours. Then on Friday, he works a case for 10 hours and another one on Saturday for 10 hours. His total weekly hours are only 30 – not enough for federal overtime rules to kick in. But in California, you're required to pay George 18 hours at time-and-a-half (9 for Friday and 9 for Saturday) and 2 hours at double time (1 for Friday and 1 for Saturday). It's important to note that all this talk about 6 th and 7 th days does not necessarily reference Friday and Saturday (although for the sake of simplicity, that's what I used in the examples). California law follows federal law in allowing employers to designate their "workweek" – a 7 consecutive day period that could start on any day of the week. When we say 6 th or 7 th day, we mean the 6 th or 7 th consecutive day in the designated workweek. But let's go back a few paragraphs where I stated: "If your aide also performs a significant amount of work other than supervising, feeding, and dressing . . . they lose their status as a personal attendant." Well, how much is a "significant amount of work"? If the aide washes the patient's breakfast dishes – does he lose his status as a personal attendant? What if she does the patient's laundry? Or cooks lunch? Ah, the stuff that legal opinions and lawsuits are made of. Wage Order #15 does not deign to disclose any further definitions, so at Viventium, we leave the parsing of personal and non-personal attendant-ude to your legal counsel. You tell us which cases/hours your

aide worked as a personal attendant (PA) and which as a non-personal attendant (NPA), and we'll do your overtime/double time right. And you can give it to us as complex as you get it – aides can be working a few hours on one charge date as a PA and a few other hours as an NPA – and Viventium gets it right. Aides can be working in the home they live in as an NPA and then go out on a 6 th or 7 th day to another case as a non-live-in NPA – and Viventium gets it right. That's because at Viventium, we speak your language, we get the nuances of federal and state labor laws, and – when it comes to 6 th and 7 th day work in California – we give you the tools to pay it right.

This information is for educational purposes only, and not to provide specific legal advice. This may not reflect the most recent developments in the law and may not be applicable to a particular situation or jurisdiction.