

## **Fact Sheet #79: Private Homes and Domestic Service Employment Under the Fair Labor Standards Act (FLSA)**

This fact sheet provides general information concerning what is a “private home” for purposes of domestic service employment under the FLSA.

### **Who Is a Domestic Service Worker?**

Domestic service workers provide services of a household nature in or about a private home. Persons employed in domestic service in private homes are covered by the FLSA. Domestic service workers include companions, babysitters, cooks, waiters, maids, housekeepers, nannies, nurses, janitors, caretakers, handymen, gardeners, home health aides, personal care aides, and family chauffeurs. Services that are not performed in or about a private home are not considered “domestic service employment” under the FLSA.

### **What Is a Private Home?**

A private home may be a fixed place of abode or a temporary dwelling, as in the case of an individual or family traveling on vacation. A separate and distinct dwelling maintained by an individual or a family in an apartment house, condominium, or hotel may constitute a private home.

Typically, a home owned and occupied by a family would be a private home; however, a nursing home, residential treatment facility, residential care home or facility, or other similar residence would not be considered a private home for the purpose of domestic service employment under the FLSA. In analyzing whether services were performed in a private home, the living unit of the person receiving the services (the client) must be evaluated. In determining whether a particular living unit is a private home, the following factors below should be analyzed:

#### *Factors to Analyze When Determining if a Living Unit is a Private Home*

- 1) Whether the client lived in the living unit before he or she received any services:
  - If the client lived in the living unit before receiving any services, this indicates that the living unit may be a private home.
  - If the client did not live in the living unit before becoming a client, and if the client would not live in the living unit if he or she were not receiving services, then this indicates that the living unit would not be considered a private home.
- 2) Who owns the living unit:
  - If the living unit is owned or leased by the client or the client’s family, this indicates that the living unit is likely a private home.
  - If the living unit is owned or leased by a service provider, this indicates that the living unit is likely not a private home.
- 3) Who manages and maintains the residence (who pays for the mortgage, rent, utilities, and food):

- If many of the essentials of daily living are provided by the client or the client's family, then this factor weighs in favor of the living unit being a private home.
- If a service provider provides essentials of daily living, then this factor weighs in favor of it not being a private home.

4) Whether the client would be allowed to live in the unit if the client were not receiving services from the service provider:

- If the client would be allowed to live in the unit without contracting for services, then this factor would weigh in favor of it being a private home.
- If the client would not be allowed to live in the unit without contracting for services, then this factor would weigh in favor of it not being a private home.

5) Relative difference in the cost/value of the services provided and the total cost of maintaining the living unit:

- If the cost/value of the services is incidental to the other living expenses, then this factor weighs in favor of it being a private home.
- If the cost/value of the services is a substantial portion of the total cost of maintaining the living unit, then this factor weighs in favor of it not being a private home.

6) Whether the service provider uses any part of the residence for the provider's own business purposes:

- If the service provider does not use any part of the residence for its own business purpose, then this factor weighs in favor of it being a private home.
- If the service provider uses any part of the residence for its own business purpose, for example using part of the residence as a business office, then this factor weighs in favor of it not being a private home.

Other factors to consider include: whether significant public funding is involved; who determines who lives together in the home; whether residents live together for treatment purposes as part of an overall care program; the number of residents; whether the clients can come and go freely; whether the employer or the client acquires the furniture; who controls access to the living unit; and whether the provider is a for-profit or not-for-profit entity.

A determination of whether domestic services are provided in a private home is fact-specific and must be made on a case-by-case basis. No specific factor controls; the overall situation must be analyzed. The employer claiming that a particular living unit is a private home under the FLSA must clearly establish this fact by considering the relevant factors discussed above.

### **Where to Obtain Additional Information**

**For additional information, visit our Wage and Hour Division Website: <http://www.wagehour.dol.gov> and/or call our toll-free information and helpline, available 8 a.m. to 5 p.m. in your time zone, 1-866-4USWAGE (1-866-487-9243).**

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