

CHAPTER 219
APPLICATION OF THE FAIR LABOR STANDARDS ACT
TO DOMESTIC SERVICE
[Prior to 11/4/98, see 347—Ch 219]

875—219.1 Reserved.

875—219.2(91D) Purpose and scope.

219.2(1) Reserved.

219.2(2) The minimum wage protection applies to employees employed as domestic service employees under either of the following circumstances:

a. If the employee's compensation for services from the employer would constitute wages, that is, if the compensation during a calendar year totaled \$100 or more, or

b. If the employee was employed in such domestic service work by one or more employers for more than eight hours in the aggregate in any workweek. 875—subrule 215.4(14) provides a minimum wage exemption for “employees employed on a casual basis in domestic service employment to provide babysitting services” and for domestic service employees employed “to provide companionship services for individuals who (because of age or infirmity) are unable to care for themselves.”

SOURCE: 29 CFR 552.2.

875—219.3(91D) Domestic service employment. Domestic service employment refers to services of a household nature performed by an employee in or about a private home (permanent or temporary) of the person by whom the employee is employed.

SOURCE: 29 CFR 552.3.

875—219.4(91D) Babysitting services. As an exemption, the term “babysitting services” means the custodial care and protection, during any part of the 24-hour day, of infants or children in or about the private home in which the infants or young children reside. The term “babysitting services” does not include services relating to the care and protection of infants or children which are performed by trained personnel, as registered, vocational, or practical nurses. While trained personnel do not qualify as babysitters, this fact does not remove them from the category of a covered domestic service employee when employed in or about a private household.

SOURCE: 29 CFR 552.4.

875—219.5(91D) Casual basis. As used in 875—subrule 215.4(14), the term “casual basis,” when applied to babysitting services, means employment which is irregular or intermittent, and which is not performed by an individual whose vocation is babysitting. Casual babysitting services may include the performance of some household work not related to caring for the children, provided that the work is incidental, i.e., does not exceed 20 percent of the total hours worked on the particular babysitting assignment.

SOURCE: 29 CFR 552.5.

875—219.6(91D) Companionship services for the aged or infirm. As used in 875—subrule 215.4(14), the term “companionship services” means those services which provide fellowship, care, and protection for persons who, because of advanced age or physical or mental infirmity, cannot care for their own needs. The services may include household work related to the care of the aged or infirm person such as meal preparation, bed making, washing of clothes, and other similar services. They may also include the performance of general household work, provided that such work is incidental, i.e., does not exceed 20 percent of the total weekly hours worked. The term “companionship services” does not include services

relating to the care and protection of the aged or infirm which require and are performed by trained personnel, as a registered or practical nurse. While trained personnel do not qualify as companions, this fact does not remove them from the category of covered domestic service employees when employed in or about a private household.

SOURCE: 29 CFR 552.6.

875—219.7 to 219.99 Reserved.

875—219.100(91D) Application of minimum wage and overtime provisions.

219.100(1) Reserved.

219.100(2) Employers may take appropriate credit for the reasonable cost or fair value of food, lodging and other facilities customarily furnished to the employee by the employer such as drugs, cosmetics, dry cleaning, etc. Credit may be taken for the reasonable cost or fair value of these facilities only when the employee's acceptance of them is voluntary and uncoerced. Where uniforms are required by the employer, the cost of the uniforms and their care may not be included in the credit.

219.100(3) For enforcement purposes, the commissioner will accept a credit taken by the employer of \$1.50 for breakfast (if furnished), \$2 for lunch (if furnished), and \$2.50 for dinner (if furnished), which meal credits do not exceed \$6 a day. Nothing herein shall prevent employers from crediting themselves with the actual cost or fair value of furnishing meals, as determined in accordance with 875—Chapter 217, if the cost or fair value is different from the meal credits specified above, provided that employers keep, maintain and preserve (for a period of three years) the records on which they rely to justify such different cost figures.

219.100(4) In the case of lodging furnished to live-in domestic service employees, the commissioner will accept a credit taken by the employer of \$30 a week. Nothing herein shall prevent employers from crediting themselves with the actual cost or fair value of furnishing lodging, as determined in accordance with 875—Chapter 217, if such cost or fair value is different from the amount specified above provided, however, that employers keep, maintain, and preserve (for a period of three years) the records on which they rely to justify such different cost figures.

SOURCE: 29 CFR 552.100.

875—219.101(91D) Domestic service employment.

219.101(1) and **219.101(2)** Reserved.

219.101(3) In determining the total hours worked, the employer must include all time the employee is required to be on the premises or on duty and all time the employee is suffered or permitted to work.

SOURCE: 29 CFR 552.101.

875—219.102(91D) Live-in domestic service employees.

219.102(1) Domestic service employees who reside in the household where they are employed are entitled to the same minimum wage as domestic service employees who work by the day. In determining the number of hours worked by a live-in worker, the employee and the employer may exclude, by agreement between themselves, the amount of sleeping time, mealtime and other periods of complete freedom from all duties when the employee may either leave the premises or stay on the premises for purely personal pursuits. For periods of free time (other than those relating to meals and sleeping) to be excluded from hours worked, the periods must be of sufficient duration to enable the employee to make effective use of the time. If the sleeping time, meal periods or other periods of free time are interrupted by a call to duty, the interruption must be counted as hours worked.

219.102(2) Where there is a reasonable agreement, as indicated in 219.102(1), the agreement may be used to establish the employee's hours of work in lieu of maintaining precise records of the hours actually worked. The employer shall keep a copy of the agreement and indicate that the employee's

work time generally coincides with the agreement. If it is found by the parties that there is a significant deviation from the initial agreement, a separate record should be kept for that period or a new agreement should be reached that reflects the actual facts.

SOURCE: 29 CFR 552.102.

875—219.103(91D) Babysitting services in general. Babysitting is a form of domestic service, and babysitters other than those working on a casual basis are entitled to the same benefits as other domestic service employees.

SOURCE: 29 CFR 552.103.

875—219.104(91D) Babysitting services performed on a casual basis.

219.104(1) Employees performing babysitting services on a casual basis are excluded from the minimum wage provisions.

219.104(2) Employment in babysitting services would usually be on a “casual basis,” whether performed for one or more employers, if the employment by all employers does not exceed 20 hours per week in the aggregate. Employment in excess of these hours may still be on a “casual basis” if the excessive hours of employment are without regularity or are for irregular or intermittent periods. Employment in babysitting services shall also be deemed to be on a “casual basis” (regardless of the number of weekly hours worked by the babysitter) in the case of individuals whose vocations are not domestic service who accompany families for a vacation period to take care of the children if the duration of employment does not exceed six weeks.

219.104(3) If the individual performing babysitting services on a “casual basis” devotes more than 20 percent of the individual’s time to household work during a babysitting assignment, the exemption for “babysitting services on a casual basis” does not apply during that assignment and the individual must be paid in accordance with the minimum wage requirement. This does not affect the application of the exemption for previous or subsequent babysitting assignments where the 20 percent tolerance is not exceeded.

219.104(4) Individuals who engage in babysitting as a full-time occupation are not employed on a “casual basis.”

SOURCE: 29 CFR 552.104.

875—219.105(91D) Individuals performing babysitting services in their own homes.

219.105(1) The coverage of domestic service employees is limited to those persons who perform such services in or about the private household of the employer. Accordingly, if the services are performed away from the employer’s permanent or temporary household, there is no coverage under the federal Fair Labor Standards Act, 29 U.S.C. 206(f).

219.105(2) An individual in a local neighborhood who takes four or five children into the individual’s home, which is operated as a day care home, and who does not have more than one employee or whose only employees are members of that individual’s immediate family is not covered by Iowa Code chapter 91D.

SOURCE: 29 CFR 552.105.

875—219.106(91D) Companionship services for the aged or infirm. Persons who provide care and protection for babies and young children, who are not physically or mentally infirm, are considered babysitters, not companions. The companion must perform the services with respect to the aged or infirm persons and not generally to other persons. The “casual” limitation does not apply to companion services.

SOURCE: 29 CFR 552.106.

875—219.107(91D) Yard maintenance workers. Persons who mow lawns and perform other yard work in a neighborhood community generally provide their own equipment, set their own work schedule and occasionally hire other individuals. These persons will be recognized as independent contractors who are not covered by Iowa Code section 91D.1 as domestic service employees. On the other hand, gardeners and groundskeepers employed primarily by one household are not usually independent contractors.

SOURCE: 29 CFR 552.107.

875—219.108 Reserved.

875—219.109(91D) Third-party employment.

219.109(1) Employees who are engaged in providing companionship services and who are employed by an employer or agency other than the family or household using their services, are exempt from the minimum wage requirement. Assigning an employee to more than one household or family in the same workweek would not defeat the exemption for that workweek, provided that the services rendered during each assignment come within the definition of companionship services.

219.109(2) Employees who are engaged in providing babysitting services and who are employed by an employer or agency other than the family or household using their services are not employed on a “casual basis” for purposes of the exemption. The employees are engaged in this occupation as a vocation.

SOURCE: 29 CFR 552.109.

875—219.110(91D) Record-keeping requirements.

219.110(1) Reserved.

219.110(2) In the case of an employee who resides on the premises, records of the actual hours worked are not required. Instead, the employer may maintain a copy of the agreement referred to in 219.102(91D). The more limited record-keeping requirement provided by this subrule does not apply to third-party employers. No records are required for casual babysitters.

219.110(3) Where a domestic service employee works on a fixed schedule, the employer may use a schedule of daily and weekly hours that the employee normally works and either the employer or the employee may:

- a.* Indicate by check marks, statement or other method that such hours were actually worked, and
- b.* When more or less than the scheduled hours are worked, show the exact number of hours worked.

219.110(4) The employer may require the domestic service employee to record the hours worked and submit such record to the employer.

SOURCE: 29 CFR 552.110.

These rules are intended to implement Iowa Code chapter 91D.

[Filed emergency 11/8/89 after Notice 9/6/89—published 11/29/89, effective 1/1/90]

[Filed 11/2/94, Notice 6/22/94—published 11/23/94, effective 1/1/95]