

LABOR SERVICES DIVISION[875]

Adopted and Filed

Rulemaking related to domestic service

The Labor Services Division hereby rescinds Chapter 219, “Application of the Fair Labor Standards Act to Domestic Service,” and adopts a new Chapter 219, “Domestic Service,” Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code section 91D.1.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Executive Order 10.

Purpose and Summary

This rulemaking in accordance with Executive Order 10 adopts a new Chapter 219 that details wage obligations owed to domestic service employees in a way that is more than 500 words shorter than the original Chapter 219.

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on October 30, 2024, as **ARC 8270C**. A public hearing was held on the following date(s):

- November 19, 2024
- November 20, 2024

No one attended the public hearings.

One comment asked for the calculation of meal and lodging credits to be retained to be consistent with specified federal regulations.

Another comment asked that original rule 875—219.110(91D) be retained because it is similar to a federal requirement. However, it is not necessary for state regulations to extensively repeat federal requirements, so no change has been made based on this comment.

One change from the Notice has been made to add specific federal citations to meal and lodging credits in subrules 219.6(2) and 219.6(3).

Adoption of Rulemaking

This rulemaking was adopted by the Division on December 4, 2024.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rulemaking, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Division for a waiver of the discretionary provisions, if any.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rulemaking will become effective on February 12, 2025.

The following rulemaking action is adopted:

ITEM 1. Rescind 875—Chapter 219 and adopt the following **new** chapter in lieu thereof:

CHAPTER 219
DOMESTIC SERVICE

875—219.1(91D) Purpose and scope.

219.1(1) Employees employed on a casual basis in domestic service employment to provide babysitting services and domestic service employees employed to provide companionship services for individuals who (because of age or infirmity) are unable to care for themselves are exempt from minimum wage.

219.1(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.

SOURCE: 29 CFR 552.2.

875—219.2(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—219.3(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 that 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—219.4(91D) Casual basis. "Casual basis," when applied to babysitting services, means employment that is irregular or intermittent and that 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—219.5(91D) Companionship services for the aged or infirm. "Companionship services" means those services that 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 that 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—219.6(91D) Application of minimum wage provisions.

219.6(1) 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.

219.6(2) The department will accept meal credit taken by the employer consistent with 29 CFR §552.100(c) (2024).

219.6(3) The department will accept lodging credit taken by the employer consistent with 29 CFR §552.100(d) (2024).

SOURCE: 29 CFR 552.100.

875—219.7(91D) Domestic service employment. 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—219.8(91D) Live-in domestic service employees. 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.

875—219.9(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—219.10(91D) Babysitting services performed on a casual basis.

219.10(1) Employees performing babysitting services on a casual basis are excluded from the minimum wage provisions.

219.10(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 is 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.

219.10(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.

219.10(4) Individuals who engage in babysitting as a full-time occupation are not employed on a casual basis.

SOURCE: 29 CFR 552.104.

875—219.11(91D) Individuals performing babysitting services in their own homes.

219.11(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.

219.11(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—219.12(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—219.13(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.

SOURCE: 29 CFR 552.107.

875—219.14(91D) Third-party employment.

219.14(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.

219.14(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.

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

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/8/25.