Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 875—Chapter 219
"Domestic Service"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 91D.1
State or federal law(s) implemented by the rulemaking: Executive Order 10

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

September 24, 2024 9:30 to 10 a.m.	Lake Conference Room 6200 Park Avenue, Suite 100 Des Moines, Iowa

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Division of Labor Services no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Mitchell Mahan
Iowa Department of Inspections, Appeals, and Licensing
6200 Park Avenue, Suite 100
Des Moines, Iowa 50321-1270
Phone: 515.443.1051
Email: mitchell.mahan@dia.iowa.gov

Purpose and Summary

Proposed Chapter 219 details wage obligations owed to domestic service employees in a way that is more than 500 words shorter than the original Chapter 219.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

- Classes of persons that will bear the costs of the proposed rulemaking:

The rulemaking does not impose any meaningful additional costs. Employers subject to Iowa wage law will bear the costs.

- Classes of persons that will benefit from the proposed rulemaking:

Employees and employers will benefit by having clarity on how wages are properly paid to domestic service workers.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

The rulemaking does not impose any meaningful additional costs.

- Qualitative description of impact:

The Department discerns no qualitative impact.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

There are no increased implementation or enforcement costs.

- Anticipated effect on state revenues:

The rulemaking has no anticipated fiscal impact.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

The benefit of knowing appropriate wages in this unique context outweighs the cost of compliance.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

The Department has not identified any less costly methods or less intrusive methods.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

No alternative methods were seriously considered.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

It would not be beneficial to disrupt established expectations for paying domestic service workers.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

The rules do not have a substantial impact on small business.

Text of Proposed Rulemaking

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) Nothing herein prevents employers from crediting themselves with the actual cost or fair value of furnishing meals.

219.6(3) Nothing herein prevents employers from crediting themselves with the actual cost or fair value of furnishing lodging.

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.