



Fair Labor Standards Act (FLSA) Fact Sheet

Beginning February 1, 2016, IHSS providers may be paid overtime (one and a half times the regular pay rate) when they work more than 40 hours in a workweek. The workweek begins at 12:00 a.m. (midnight) on Sunday and ends at 11:59 p.m. on the following Saturday. Recipients are authorized services on a monthly basis and, based on state law, are limited to receiving a set amount of services on a weekly basis. **The maximum number of weekly hours is calculated by dividing the total number of the recipient's monthly authorized hours by four (4).**

- A provider may **never** work more than a recipient's monthly authorized hours for that recipient.
- The recipient is responsible for making a schedule for each provider so that the total hours worked by all providers **do not** exceed the recipient's maximum weekly hours or monthly authorized hours.
- A provider **may** work more than a recipient's weekly authorized hours under certain circumstances.
- If the recipient adjusts his/her weekly authorized hours to have a provider work more than the usual authorized amount, the provider **must work less hours in a previous or later week** to not exceed the recipient's authorized monthly hours or work more overtime in the month than normal.
- The provider must make sure that the total combined hours worked providing authorized services for all the recipients in one workweek **do not** total more than the 66 hours in a workweek.

Likewise, as of February 1, 2016, IHSS providers may be paid for travel time for up to a maximum of seven (7) hours in a workweek when the provider works for multiple recipients and is **required to travel from one job site directly to another job site during the same workday**. A provider will **not** be compensated for travel to and from his/her home to any IHSS recipient's location.

VIOLATIONS

An IHSS provider will receive a violation for any one of the following actions:

- Working more than 40 hours in a workweek for a recipient without receiving county approval when the recipient's maximum weekly hours are 40 or less;
- Working more hours in a workweek than the recipient's maximum weekly hours resulting in more overtime hours in a month than he/she normally works without receiving county approval;
- Working more than the maximum weekly limit of 66 hours when working for multiple recipients;
- Claiming more than seven (7) hours of travel time in a workweek.

1 st Violation	2 nd Violation	3 rd Violation	4 th Violation
Notice of violation with information on how to request a county review	Notice of violation with information on how to request a county review Complete one-time training, 2 nd violation avoided Does not complete one time training within 14 days of notice, 2 nd violation confirmed	Notice of violation with information on how to request a county review Optional: State Administrative Review if the violation is upheld Suspended as an IHSS Provider for 3 months, or 90 days	Notice of violation with information on how to request a county Optional: State Administrative Review if the violation is upheld Terminated as an IHSS Provider for one year, or 365 days

Each violation received will remain on the provider's record. However, after one year of no additional violations, the total number of violations will be reduced by one. If the provider receives a fourth violation and is terminated for one year, when the year is up, s/he may apply again to be an IHSS provider, and the violations count will be reset to zero.

EXCEPTIONS

An exception is defined as a request by an IHSS recipient to a county to allow the recipient to adjust his/her maximum weekly hours for his/her provider to work additional hours during a particular workweek, which may result in additional overtime hours within that calendar month. The following criteria is used:

- The additional hours must be necessary to meet an unanticipated need;
- The additional hours must be related to an immediate need that cannot be postponed until the arrival of a back-up provider as designated on the IHSS Program Individual Emergency Back-Up Plan (SOC 827)
- The additional hours must be related to a need that would have a direct impact on the IHSS recipient and would be needed to ensure his/her health and/or safety

An IHSS recipient seeking an exception may contact the county to make the request via telephone or in writing. When the request is not made to the county or the exception is not granted, the IHSS provider will receive a violation if the provider exceeds the workweek limitations.

EXEMPTIONS

Exemption 1: Live-In Family Care Providers

IHSS providers who met the following requirements on or before January 31, 2016 may provide services to two or more live-in family member recipients and work up to 90 hours per workweek, not to exceed 360 hours per month:

- The IHSS provider works for two or more IHSS recipients;
- The IHSS provider lives in the same home as all the IHSS recipients for whom he/she provides services;
- The IHSS provider is related to all the IHSS recipients for whom he/she provides services, as his/her parent, adoptive parent, step-parent, grandparent or legal guardian. Recipients whose providers qualify for this exemption and work the maximum monthly 360 hours must hire additional IHSS providers as necessary to provide any remaining authorized IHSS.

Exemption 2: Extraordinary Circumstances Exemption

The Extraordinary Circumstances Exemption is for providers who serve two or more recipients who meet one or more of the criteria listed below to allow them to work up to 360 hours per month, up to 90 hours per week combined for all recipients, and not receive a workweek violation.

- **Criteria A:** Have complex medical and/or behavioral needs that must be met by a provider who lives in the same home as the recipient.
- **Criteria B:** Live in a rural or remote area where available providers are limited and as a result the recipient is unable to hire another provider.
- **Criteria C:** Unable to hire a provider who speaks the same language in order to direct his/her own care.

Under **Criteria A**, the IHSS provider must live in the same home as the recipient(s) applying for Exemption 2 under this condition. Under **Criteria B and C**, the IHSS provider is not required to live in the same home as the recipient(s) applying for Exemption 2 under these conditions.

View the 2016 FLSA New Program Requirements video at the following link:

<http://www.cdss.ca.gov/In-Home-Supportive-Services/IHSS-Education-Videos>

For questions regarding FLSA, call the *IHSS FLSA Informational Line* at:

English (510) 577-3572 ☎ Español (510) 577-3591 ☎ 廣東話/广东话 (510) 577-3592

Forms may be submitted any one of the following ways:

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| <input type="checkbox"/> Mail to:
In-Home Supportive Services
6955 Foothill Blvd., Ste. 300
Oakland, CA 94605 | <input type="checkbox"/> Drop-off at:
IHSS Office Front Lobby
Suite 143 (1 st Floor) | <input type="checkbox"/> For next-day deadlines only, call: (510) 577-1877 or leave a message on the <i>FLSA line</i> |
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