

DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF LABOR STANDARDS ENFORCEMENT
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SUSAN A. DOVI
Staff Attorney

November 6, 2014

Consuelo P. Neri,
Licensee, Administrator
Sweet Hollander Home
24329 Sylvan Glen Road
Diamond Bar, CA 91765

Re: Request for Clarification regarding the Domestic Worker Bill of Rights

Dear Ms. Neri,

Thank you for your letter of September 28, 2014. In your letter you asked for clarification concerning the Domestic Worker Bill of Rights, specifically, whether it applies to your business. You indicate that that your business is a group home or residential care facility, caring for adults with disabilities.

The Domestic Worker Bill of Rights applies to work performed in the home. California Labor Code section 1451(a)(2) specifically states that "'Domestic Work' **does not** include care of persons in facilities providing board or lodging in addition to medical, nursing, convalescent, aged, or child care, including but not limited to, residential care facilities for the elderly." You indicate your business is a residential care facility. The Domestic Worker Bill of Rights does not apply to employees working in a residential care facility. Your business is governed by other provisions in the California Labor Code and by Industrial Welfare Commission Order 5-2001 ("Wage Order 5"), Regulating Wages, Hours and Working Conditions in the Public Housekeeping Industry.

The Domestic Worker Bill of Rights was enacted by the California Legislature in 2013 and became effective January 1, 2014. The Domestic Worker Bill of Rights controls a specific area of employment for certain domestic workers who work in the home and has special overtime requirements for certain workers. Wage Order 15 also applies to household occupations, i.e. work that takes place in the home. The Wage Orders, including Wage Order 5 and 15, are regulations which have existed for decades and which were amended from time to time by the Industrial Welfare Commission. Although the Commission is no longer funded, the Orders continue to regulate in the various industries and occupations and have the force and effect of law. If there are any conflicts between the Domestic Worker Bill of Rights and Wage Order 15, then the Domestic Worker Bill of Rights would control as it is a statute enacted by the Legislature. Since the Domestic Worker Bill of Rights does not apply to employees working in residential care facilities, Wage Order 5 and other general requirements under the California Labor Code, including daily and weekly overtime requirements, apply to your business.

There are only limited exceptions to daily overtime under Wage Order 5. Nothing in your letter would indicate that an exception applies to your business. Absent an exception, the overtime requirements under California law are in the California Labor Code at Section 510. Labor Code section 510 provides:

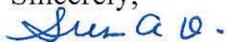
Eight hours of labor constitutes a day's work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee. Nothing in this section requires an employer to combine more than one rate of overtime compensation in order to calculate the amount to be paid to an employee for any hour of overtime work.

I have enclosed a copy of Labor Code section 510 and Wage Order 5. Please note that the wage order is required to be posted at the work premises.

Both Labor Code section 510 and Wage Order 5 also refer to an exception to the above regular overtime rules applicable to a properly adopted "alternative workweek schedule" (AWS) established between employees and an employer. Subject to specified limitations, a properly adopted AWS can provide for workdays which exceed 8 hours without the payment of overtime where employees voluntarily adopt an AWS following an election. It is very important that an employer comply with the procedures and substantive requirements for instituting and applying an AWS for its employees, and thus, careful review of the requirements specified in Labor Code section 511 and Wage Order 5 must be performed prior to establishing such a schedule. In short, if employees in your facility are working over 8 hours in a day, they should be paid overtime for all hours over 8, unless you have a valid AWS.

This opinion is based exclusively on the facts and circumstances described in your request and is given based upon your representations, express or implied, that you have provided a full and fair description of all facts and circumstances that would be pertinent to our consideration of the questions presented. The existence of any other factual or historical background not contained in your letter might require a conclusion different from the one expressed herein. You have represented that this opinion is not sought by a party to pending private litigation concerning the issues addressed herein. You have also represented that this opinion is not sought in connection with an investigation or litigation between a client or firm and the Division of Labor Standards Enforcement.

Thank you for your inquiry.

Sincerely,

Susan A. Dovi
Staff Attorney