

EMPLOYMENT STANDARDS FACT SHEET

RESIDENTIAL CARE AND HOME CARE

Effective April 1, 2004, an amendment to the *Employment Standards Regulation* removes the requirement for permits in the residential care and home care industries. This amendment creates a more efficient process by reducing administrative costs, and making hours of work and overtime rules transparent.

Defining Residential Care and Home Care

Residential Care

Residential care is provided in a residential setting such as a group home or shelter where employees provide care to several clients at once. Residential care employees are employed to provide health, personal, or rehabilitation care. Employees hired to perform office work, meal preparation, housekeeping and other duties not directly related to client care are **not** included.

Home Care

Home care is provided in the client's residence on a one-on-one basis. Home care employees are employed to provide health, personal, or rehabilitation care and routine homemaking services for clients. However, these employees are **not** employed directly by the clients. Most often these employees are employed by agencies.

Caregivers employed directly by their clients to provide home care services are domestic employees. The employment standards for domestics are described in Fact Sheet Number 11, *Domestic Employment*, available on our web site at www.gov.ab.ca/hre/employmentstandards/publications.

Payment of Wages and Overtime for Residential Care and Home Care

Employees working a 24-hour shift

Residential care employees working a 24-hour shift must receive an amount at least equivalent to the minimum wage for 24 hours ($\$7.00 \times 24 = \168.00).

Home care employees working a 24-hour shift must receive an amount at least equivalent of the minimum wage for 12 hours ($\$7.00 \times 12 = \84.00).

In both residential care and home care, 12 hours of each 24-hour shift are considered regular hours of work. Regular hours worked in excess of 264 per work month are overtime hours. There is no daily overtime in a 24-hour shift.

Employees working less than a 24-hour shift

Employees working less than a 24-hour shift must be paid at least minimum wage for each hour of the shift.

In each work month, hours worked in excess of 12 hours per work day or 264 hours per work month, whichever is greater, are overtime hours.

An employer may designate up to 8 hours as sleep time in each shift that are **not** counted as hours of work when calculating daily or monthly overtime hours. If an employee works during designated sleep time, that time worked is counted as hours of work and are included when calculating daily and monthly overtime.

Client Outings

Unless the parties agree to other arrangements, when a caregiver accompanies a client on a vacation or some other outing, the caregiver must be paid at least what would have been earned during the same period when not on an outing.

Short Periods of Work and Travel Time in Home Care

Home care may involve caregivers visiting several clients in a day, with time often spent traveling between clients or periods of inactivity. Travel time or breaks can last anywhere from less than an hour to several hours depending on the needs and location of the client.

When visits are separated by an **unpaid** break in work or travel time of any duration, the visit before and after the break or travel time each become a separate period of employment.

- Contact our Information Centre at: **427-3731**
(Toll-free in Alberta by dialing 310-0000, then 780-427-3731)
- Visit our Web site at: www.gov.ab.ca/hre/employmentstandards

Note: When there is a meal break of 1 hour or less between visits, the visit before and after the meal break are combined when determining whether an employee has received an equivalent of 2 hours at minimum wage. Meal breaks typically include breakfast, lunch and dinner.

For each separate period of employment, the employee must be paid an amount equivalent to at least two hours at the prevailing minimum wage **or** their actual work time spent with the client, at their normal wage rate, whichever is greater. Provided that the greater amount has been paid for each separate period of employment, the employer is not required to pay for the break or travel time.

An employer may choose to pay through some or all breaks or travel time during the day instead of paying the 2-hour minimum for each separate period of employment.

It is Employment Standards' policy that the 2-hour minimum payment does not apply if the employee chooses to be only available to work for a shorter time.

Payment of Other Earnings

Employees remain entitled to other earnings under the Employment Standards Code such as vacation pay, general holiday pay and termination pay.

Excerpts from the *Employment Standards Regulation* Part 3, Division 9 Caregivers

Definitions

43.1 In this Division,

- (a) “caregiver” means an employee who provides home care or residential care;
- (b) “designated sleep time” means the period, to a maximum of 8 hours, designated by the employer as sleep time on a shift that is not a 24-hour shift;
- (c) “home care” means the provision of
 - (i) a health care service,
 - (ii) a personal care service, or
 - (iii) a homemaking service as defined in the *Co-ordinated Home Care Program Regulation* (AR 296/2003) to home care clients in their homes, but does not include
 - (iv) heavy housework service,
 - (v) handyman service,
 - (vi) the services commonly known as “Meals on Wheels” and “Wheels to Meals”,
 - (vii) transportation service, or
 - (viii) office or administrative services;
- (d) “home care client” means an individual, regardless of age, who
 - (i) requires home care,
 - (ii) is unable to perform daily living activities independently, and
 - (iii) is not the employer of the caregiver;

- (e) “residential care” means the provision of
- (i) a health care service, or
 - (ii) a personal care service,
as defined in the *Co-ordinated Home Care Program Regulation* (AR 296/2003) to residential care clients but does not include
 - (iii) office or administrative services,
 - (iv) menu planning or meal preparation,
 - (v) housekeeping, janitorial and maintenance services, or
 - (vi) other services not directly related to the personal care and health care of the client;
- (f) “residential care client” means an individual, regardless of age, who
- (i) requires residential care,
 - (ii) lives or stays in a residential setting, and
 - (iii) is not the employer of the caregiver;
- (g) “residential setting” means a facility that provides any of the following:
- (i) emergency shelter;
 - (ii) addiction treatment;
 - (iii) supervision and treatment of young offenders;
 - (iv) care and treatment of individuals with emotional or behavioural difficulties;
 - (v) care and treatment of individuals with physical or developmental disabilities;
- (h) “24-hour shift” means a shift during which a caregiver is providing home care or residential care for a continuous period of 24 hours.

Application

43.2 This Division applies

- (a) to caregivers who are employed to provide home care or residential care, and
- (b) to the respective employers of the caregivers referred to in clause (a) while acting in the capacity of an employer.

Substitution for Act

43.3 This Division applies in substitution for sections 16 and 21 of the Act.

Caregiver payment for hours of work and overtime

43.4(1) Where a caregiver is employed for a 24-hour shift,

- (a) the caregiver
 - (i) who provides home care must be paid an amount that is at least equivalent to the minimum wage for 12 hours, and
 - (ii) who provides residential care must be paid an amount that is at least equivalent to the minimum wage for 24 hours,
- (b) 12 hours of each 24-hour shift are used to calculate the total number of hours worked in a work month for overtime purposes, and
- (c) any hours worked in excess of 264 hours in a work month are overtime hours.

- (2) Where a caregiver is employed for less than a 24-hour shift,
 - (a) the caregiver must be paid at least the minimum wage for each hour of the shift,
 - (b) overtime hours in respect of a work month are
 - (i) the total of the caregiver's hours of work in excess of 12 hours for each work day in the work month, or
 - (ii) the caregiver's hours work in excess of 264 hours in the work month, whichever is greater, and where the number of hours calculated under subclause (i) is equal the number of hours calculated under subclause (ii), then those hours are the overtime hours, and
 - (c) any hours in a designated sleep time are not used to calculate overtime hours except where the caregiver is providing home care or residential care during all or a portion of those hours.

Caregiver payment for outings with client

43.5(1) Where a caregiver accompanies a home care client or residential care client on a vacation, a recreational or educational outing or some other outing, the caregiver must be paid an amount that is at least equal to the amount payable to the caregiver when providing home care in the home care client's home or residential care to the residential care client in a residential setting, as the case may be.

- (2) Subsection (1) does not apply if the care giver and client have agreed otherwise.

Caregiver payment for less than 2 hours

43.6(1) A caregiver who is providing home care for less than 2 consecutive hours must be paid for 2 hours of work at not less than the minimum wage.

- (2) For the purposes of subsection (1),
 - (a) an unpaid meal period of one hour or less is not to be considered as part of the 2 consecutive hours of work, and
 - (b) hours of work immediately following the meal period referred to in clause (a) are to be counted as if they were hours of work following consecutively the hours of work before the meal period.