

§ 552.105

(c) If the individual performing babysitting services on a "casual basis" devotes more than 20 percent of his or her 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 Act's minimum wage and overtime requirements. This does not affect the application of the exemption for previous or subsequent babysitting assignments where the 20 percent tolerance is not exceeded.

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

[40 FR 7405, Feb. 20, 1975, as amended at 60 FR 46768, Sept. 8, 1995]

§ 552.105 Individuals performing babysitting services in their own homes.

(a) It is clear from the legislative history that the Act's new coverage of domestic service employees is limited to those persons who perform such services in or about the private household of the employer. Accordingly, if such services are performed away from the employer's permanent, or temporary household there is no coverage under sections 6(f) and 7(l) of the Act. A typical example would be an individual who cares for the children of others in her own home. This type of operation, however, could, depending on the particular facts, qualify as a preschool or day care center and thus be covered under section 3(s)(1)(B) of the Act in which case the person providing the service would be required to comply with the applicable provisions of the Act.

(b) An individual in a local neighborhood who takes four or five children into his or her 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 the Fair Labor Standards Act.

[40 FR 7405, Feb. 20, 1975, as amended at 60 FR 46768, Sept. 8, 1995]

§ 552.106 Companionship services for the aged or infirm.

The term "companionship services for the aged or infirm" is defined in

29 CFR Ch. V (7-1-05 Edition)

§ 552.6. 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.

§ 552.107 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. Such persons will be recognized as independent contractors who are not covered by the Act as domestic service employees. On the other hand, gardeners and yardmen employed primarily by one household are not usually independent contractors.

§ 552.108 Child labor provisions.

Congress made no change in section 12 as regards domestic service employees. Accordingly, the child labor provisions of the Act do not apply unless the underaged minor (a) is individually engaged in commerce or in the production of goods for commerce, or (b) is employed by an enterprise meeting the coverage tests of sections 3(r) and 3(s)(1) of the Act, or (c) is employed in or about a home where work in the production of goods for commerce is performed.

§ 552.109 Third party employment.

(a) Employees who are engaged in providing companionship services, as defined in § 552.6, and who are employed by an employer or agency other than the family or household using their services, are exempt from the Act's minimum wage and overtime pay requirements by virtue of section 13(a)(15). Assigning such 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.

(b) 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 section 13(a)(15) exemption. Such employees are engaged in this occupation as a vocation.

(c) Live-in domestic service employees who are employed by an employer or agency other than the family or household using their services are exempt from the Act's overtime requirements by virtue of section 13(b)(21). This exemption, however, will not apply where the employee works only temporarily for any one family or household, since that employee would not be "residing" on the premises of such family or household.

§ 552.110 Recordkeeping requirements.

(a) The general recordkeeping regulations are found in part 516 of this chapter and they require that every employer having covered domestic service employees shall keep records which show for each such employee: (1) Name in full, (2) social security number, (3) address in full, including zip code, (4) total hours worked each week by the employee for the employer, (5) total cash wages paid each week to the employee by the employer, (6) weekly sums claimed by the employer for board, lodging or other facilities, and (7) extra pay for weekly hours worked in excess of 40 by the employee for the employer. No particular form of records is required, so long as the above information is recorded and the record is maintained and preserved for a period of 3 years.

(b) In the case of an employee who resides on the premises, records of the actual hours worked are not required. Instead, the employer may maintain a copy of the agreement referred to in § 552.102. The more limited recordkeeping requirement provided by this subsection does not apply to third party employers. No records are required for casual babysitters.

(c) Where a domestic service employee works on a fixed schedule, the employer may use a schedule of daily and weekly hours that the employee normally works and either the employer or the employee may: (1) Indicate by check marks, statement or other method that such hours were ac-

tually worked, and (2) when more or less than the scheduled hours are worked, show the exact number of hours worked.

(d) The employer may require the domestic service employee to record the hours worked and submit such record to the employer.

PART 553—APPLICATION OF THE FAIR LABOR STANDARDS ACT TO EMPLOYEES OF STATE AND LOCAL GOVERNMENTS

Subpart A—General

INTRODUCTION

- Sec.
- 553.1 Definitions.
- 553.2 Purpose and scope.
- 553.3 Coverage—general.

SECTION 3(E)(2)(C)—EXCLUSIONS

- 553.10 General.
- 553.11 Exclusion for elected officials and their appointees.
- 553.12 Exclusion for employees of legislative branches.

SECTION 7(O)—COMPENSATORY TIME AND COMPENSATORY TIME OFF

- 553.20 Introduction.
- 553.21 Statutory provisions.
- 553.22 "FLSA compensatory time" and "FLSA compensatory time off".
- 553.23 Agreement or understanding prior to performance of work.
- 553.24 "Public safety", "emergency response", and "seasonal" activities.
- 553.25 Conditions for use of compensatory time ("reasonable period", "unduly disrupt").
- 553.26 Cash overtime payments.
- 553.27 Payments for unused compensatory time.
- 553.28 Other compensatory time.

OTHER EXEMPTIONS

- 553.30 Occasional or sporadic employment—section 7(p)(2).
- 553.31 Substitution—section 7(p)(3).
- 553.32 Other FLSA exemptions.

RECORDKEEPING

- 553.50 Records to be kept of compensatory time.
- 553.51 Records to be kept for employees paid pursuant to section 7(k).

Subpart B—Volunteers

- 553.100 General.
- 553.101 "Volunteer" defined.