

Fair Labor Standards Act Live-In Exemption

The United States Department of Labor (US DOL) and Fair Labor Standards Act (FLSA) requires household employers to pay employees overtime pay for hours worked over 40 per workweek unless the employee qualifies for an exemption. Use this form to notify the Office of Long-Term Living (OLTL), through its contractor Public Partnerships if the employee qualifies for the live-in exemption from overtime pay. You may also use this form to revoke the exemption when the employee no longer qualifies for the exemption.

Participant Name:	Participant ID:
Direct Care Worker Name:	Direct Care Worker ID:

Step 1: Determine if the Direct Care Worker (DCW) Qualifies for the Live-In Exemption from Overtime Pay

The live-in exemption is:

- Available only in programs where the participant or their representative is the sole employer under the FLSA;
- Applies only to the employer/DCW pair based on the “Residency Test” (below); and
- Applies to all services provided by the DCW for that employer.

Residency Test

A live-in DCW is exempt from overtime premium pay if the DCW “...resides on the employer's premises either permanently or for extended periods of time”. “Employer’s premises” means the household where employed. “Permanently”, or “...extended periods of time” means the DCW lives, works, and sleeps in the household where employed for at least five (5) days a week (120 hours) or more.

Step 2: Certify the DCW’s Eligibility for the Live-In Exemption from Overtime Pay

Please check one box below to identify whether the DCW qualifies for the live-in exemption.

- YES, the DCW qualifies for the live-in exemption.
- NO, the DCW does not qualify for the live-in exemption.

If the DCW qualifies for the live-in exemption:

- All hours, including overtime (over 40 hours per workweek), will be paid at regular rates for all services once the Office of Long-Term Living (OLTL), through its contractor Public Partnerships receives this form and enters the information in our payroll system.

Step 3: Sign and Authorize

Participant/Employer	Date	DCW	Date
----------------------	------	-----	------

By signing, we understand that it is our responsibility to inform the Office of Long-Term Living (OLTL), through its contractor Public Partnerships when the DCW no longer lives with the employer. Both parties must sign to claim the exemption. Only the employer must sign to revoke the exemption.

IMPORTANT: Live-In providers of Medicaid waiver services may be eligible for the IRS Difficulty of Care (DOC) federal income tax exclusion. The DOC income exclusion may also qualify DCW for a refund of state income taxes. SSW’s do not need to request a corrected W-2 to request a tax refund. To learn more, visit: <http://www.irs.gov/Individuals/Certain-Medicaid-Waiver-Payments-May-Be-Excludable-From-Income>