

Hourly Pay versus Salary For Household Employees

Household employees – including nannies – must be paid according to the Fair Labor Standards Act (FLSA). That legislation dictates that families who hire a live-out nanny, must pay her overtime for any hours over 40 in a 7-day workweek (please note: live-in nannies are exempt from overtime). Each of the overtime hours must be paid at a rate that is at least 1.5 times that of the regular rate of pay.

So, let's say you pay your nanny \$11.50 per hour. Based on your 48-hour workweek, she would be paid \$11.50/hour for the first 40 hours and \$17.25/hour for the eight overtime hours.

If your nanny is on a salary, you are allowed to manage overtime in a different manner. Let's say you both have agreed to a salary of \$600 for the 48-hour workweek. In this case, the contract should explicitly state that the regular rate of pay for the first 40 hours is \$11.54/hour. The overtime rate for the remaining 8 hours per week is \$17.31 per hour. Therefore, the total weekly salary is \$600.

While it may seem superfluous to split the salary into regular and overtime rates, it is an important protection. There have been many lawsuits around the country brought by former nannies claiming families did not pay overtime. Unless overtime is explicitly addressed in writing, the judge will almost always assume overtime was not paid and force the family to pay back overtime wages plus interest.

For those families, it's a very costly situation. The good news is it can easily be avoided with a couple of simple sentences.