

The Legal Review

Sharing Case Law that Affects the Household Employment Industry

A Complimentary Resource from
Breedlove & Associates

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In an effort to help you strengthen your business practices and steer clear of legal trouble, The Legal Review will share findings from relevant legal cases. We've found that the easiest way to gain a practical understanding of complex tax and labor law is by reviewing real-life situations. These stories will illuminate potential legal landmines for your agency and/or your clients, and more importantly, show you how to avoid them.

Overtime Pay Requirement: Nanny vs. Family and Family vs. Annie's Nannies Household Staffing

The Mistake

A family paid their nanny on an hourly basis. The standard work week for the nanny was 50 hours. The family paid a standard rate for every hour worked each week.

The Law

Why is this a problem? Household employees must be compensated according to the Fair Labor Standards Act (FLSA), which provides the framework for federal and state wage and hour law. The FLSA classifies household employees as non-exempt workers, requiring that the household employment industry provide overtime pay.

Whether a household employee is paid by the hour or on a salary, they are entitled to overtime pay if they work more than 40 hours per week. Overtime pay must be paid at 1.5 times the standard hourly rate. If an employee is paid on an hourly basis, overtime pay is easy to track. If an employee is paid a salary for a standard work week of more than 40 hours, overtime pay should be addressed as a component of the written contract to ensure protection under the law.

The Mess

- After three and a half years of employment, the relationship was deteriorating and both parties agreed to terminate employment. Unfortunately, both parties were disgruntled at the time of termination.
- The disgruntled nanny learned of the overtime requirement and decided to sue her previous employer for overtime pay. Her standard rate of pay was \$12 per hour. This produced an overtime rate of \$18 per hour. The nanny was suing for an additional \$6 per hour for 2,000 hours of overtime, or \$12,000.
- The family hired a lawyer and attempted to sue Annie's Nannies Household Staffing for the \$12,000. Their claim was that Annie's Nannies had a legal responsibility to inform the family of overtime law during the placement process. They contended that they were not informed of the law and that they would have been in compliance had they been made aware of this requirement.
- Annie's Nannies also hired a lawyer to fight the potential law suit.

The Outcome

- Annie's Nannies was able to prove that they had informed the family of the overtime requirement during the placement process, as Annie's Nannies provides a package of educational material from Breedlove & Associates addressing payroll and tax requirements. They referred the family and their attorney to the overtime segment of the Overview of Household Employment Taxes—one of the pieces included in their educational package.
- The family dropped their claim against Annie's Nannies.
- The case was eventually settled out of court for the amount of overtime due.

How the Whole Thing Could Have Been Avoided

- Annie's Nannies now discusses legal requirements with each client in addition to providing written information. This case is proof that our busy clients do not always read the information provided to them.
- Had the family incorporated overtime pay into the contract and payroll, they would have avoided a lawsuit from a disgruntled employee.

To help your clients understand the tax obligations for both employer and employee, we have developed a simple educational flyer entitled "Overtime Law: How Overtime Law Affects Household Employers". The flyer can be downloaded from <http://www.breedlove-online.com/partners/library-of-educational-literature-helpful-tools> along with our other helpful resources. Or feel free to invite your clients to call us for a complimentary, no-obligation phone consultation. In about 10 minutes, we can assess their situation and give them comprehensive financial and legal guidance. Whether they sign up with our service or not, we'll make sure this kind of ugly situation never happens to one of your clients.

If you would like hard copies of our "Overtime Law" flyer, just send an email to info@breedlove-online.com.

If you have additional questions, please call 888-BREEDLOVE (273-3356) or visit www.breedlove-online.com. We're here to help our agency partners provide their candidates and clients with information, tools and resources that improve the employment relationship, eliminate legal risk for all parties, and increase the professionalism of the industry.

