**Section 210.125 Domestic Workers**

a) Definitions. The following definitions shall apply for Section 125 only:

1) "Bona fide meal break" means a period in which a domestic worker is completely relieved from duty for the purposes of eating regular meals. Ordinarily 20 minutes or more is long enough for a bona fide meal break. A domestic worker is not completely relieved from duty if the domestic worker is required to perform any duties, whether active or inactive, while eating.

2) "Rest Period" means a period of time in which a domestic worker has complete freedom from all work-related duties and during which a domestic worker may either leave the location where the domestic work is performed without an obligation to be on call or remain at the location the domestic work is being performed for purely personal pursuits. Rest periods of less than 20 minutes must be counted as "hours worked"

3) "Shared Services" means services provided by a domestic worker to more than one employer that are intentionally coordinated by the employers. For example, in the context of childcare services, shared services are commonly referred to as a "nanny share".

4) "Sleep Period" means a regularly scheduled, uninterrupted sleeping time of not more than eight hours, during which the employer provides sleeping quarters that comply with 56 Ill. Adm. Code 210.125(d)(1)(B) and a domestic worker can sleep, uninterrupted by work-related duties. Any period of interrupted sleep to perform work-related duties must be compensated. If a domestic worker cannot get at least 5 hours of uninterrupted sleep, completely relieved of work-related duties, that time period shall not be considered a sleep period and must be compensated as working time.

b) Hours Worked. A domestic worker must be paid for all hours worked, excluding bona fide meal breaks, rest periods, and sleep periods.

1) Example: A caregiver making a personal call while watching over a client who is bedridden and requires constant supervision is not completely relieved of all work-related duties and must be compensated for this time.

2) Example: A nanny who is taking her lunch break, is able to leave the employer's premises at her discretion, and is relieved of her duties of childcare by a parent, is completely relieved of all work-related duties.

3) Example: a caregiver lives at his employer's home. As his sleep period, the caregiver is relieved of his duties at 9 pm and is to resume work at 5 am the following day. However, during one particular sleep period, he is interrupted 3 times between 11 pm and 4 am. Here, the caregiver is not allowed a period of at least 5 hours of uninterrupted sleep, the 5-hour period of 11 pm to 4 am is not considered a sleep period, and the time is compensable as working time.

c) Recordkeeping. An employer shall maintain pay and time records for domestic workers in accordance with Section 210.700.

1) Time records shall include records indicating each bona fide meal break, rest period, and sleep period taken in a workweek.

2) In the absence of accurate employer time records, a domestic worker need only produce sufficient evidence to demonstrate the amount and extent of compensable time worked as a just and reasonable inference. Credible testimony by the employee is sufficient evidence. The employer must then produce evidence of the exact amount of work or time earned or produce evidence to negate the reasonable inferences drawn from the employee's evidence. The employer's failure to make and maintain records as required under subsection (b)(1) shall not preclude a finding based on the information available that compensable time is due, even though the award may be only approximate.

d) Overtime. A domestic worker must be compensated at the overtime rate for all hours worked in excess of 40 in a workweek, regardless of the nature of the services provided. Overtime base rates must be calculated by including all credits taken by the employer for lodging and meals in a workweek as well as any deductions taken by the employer. Where two or more employers share services, the hours worked by the domestic worker for each employer must be included in calculating total hours worked in the workweek for overtime purposes.

1) Example: A worker is hired jointly by two families with an agreement to provide nanny services for two separate households. The worker provides services for a combined 50 hours during the week: 30 hours for Family A and 20 Hours for family B. The worker is entitled to 10 hours of pay at overtime rates for time worked over 40 hours.

2) Example: A cashier at a family-owned restaurant is asked by the restaurant owner to take care of the owner's children a couple of days a week. The worker works a combined 60 hours during the week: 40 hours as a cashier at the restaurant and 20 hours taking care of the owner's children. The worker is entitled to 20 hours of pay at overtime rates.

e) Lodging or Meal Credit

1) An employer may take a credit from a domestic worker's wages for meals or lodging actually provided to the domestic worker, if the following conditions are met:

A) the domestic worker voluntarily and freely chooses the lodging or meals;

B) the lodging is private, safe, and sanitary and otherwise complies with federal, State and local laws, ordinances or prohibitions including but not limited to:

i) a room with a door with a lock;

ii) at least a twin-sized bed, or larger, and other basic accommodations; and

iii) unrestricted access to the kitchen, laundry, bathroom and potable water.

C) the employer maintains accurate records on a workweek basis of any lodging and meal credit taken for that workweek, including records demonstrating:

i) the costs incurred including itemized accounts of the nature and amounts of the expenditures; and

ii) any deductions from wages, including overtime wages;

D) the resulting credit for lodging is the lesser of the fair market value of the accommodations provided or seven and one-half times the statutory minimum hourly wage for each week lodging is furnished (minimum wage X 7.5); and

E) the employer takes a credit based on the reasonable cost of the meals and the resulting credit for meals is the lessor of $2 for breakfast, $3 for lunch, and $3 for dinner or the actual cost.

2) An employer shall not take lodging or meal credits from the wages of a domestic worker if the employer requires that a domestic worker reside on the employer's premises or in a particular location or if the domestic worker maintains a separate place of residence and sleeps at the employers' premises for the benefit of the employer and for purposes of performing job duties.

(Source: Added at 46 Ill. Reg. 14051, effective July 19, 2022)