

# 2016 Fair Labor Standards Act Informational Video Script

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### Section 1: Introduction

California's In-Home Supportive Services Program, better known as IHSS, makes it possible for qualified aged, blind, and/or disabled individuals to remain safely in their own homes, where they can enjoy personal freedom and independence, and continue being a part of their community.

This video will explain changes to the IHSS program that may impact recipients and providers regarding overtime and travel time pay, and will also present general information on the new Fair Labor Standards Act, or FLSA, requirements and how they will be applied in California.

Most recipients and providers will not be impacted at all, as overtime and travel time does not apply in their individual situation. The real impact applies to providers who work more than 40 hours each workweek, providers who work for multiple recipients, or providers who travel directly from one recipient's home to another on the same day.

Since there may also be violations with consequences when the FLSA requirements are not correctly followed; for those who need further information, review additional material provided on the subject.

Changes to California state law now require paid overtime and travel time compensation for providers, under certain **conditions** and within specific limits. **These changes will become effective on February 1<sup>st</sup>, 2016.** There may also be violations, with consequences, when these laws are not correctly followed. **The consequences for violations will become effective May 1<sup>st</sup>, 2016.**

We hope this video will help recipients and providers better understand and answer any questions they may have regarding the changes to IHSS related to overtime and travel time pay.

### Section 2: Terms

Before we review the changes, there are some key terms that recipients and providers will need to know:

- **Monthly Authorized Hours,**
- **Workweek,**
- **Maximum Weekly Hours,**
- **Overtime,**
- **Travel Time, and**
- **Violations.**

Let's start with **Monthly Authorized Hours.** We want you to be clear about this number because it has a lot to do with what recipients can ask of their providers and

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what providers can claim regular and overtime pay for. These monthly authorized hours are the total number of IHSS service hours a recipient is authorized per month. The number of authorized hours for each recipient is established through the county IHSS process.

Next, we have the IHSS **workweek**, which begins at 12:00 a.m. on Sunday and ends at 11:59 p.m. the following Saturday. Getting clear on when the workweek begins and ends will help recipients and providers track how many authorized hours are planned, how many were actually worked, and whether a provider is eligible for overtime compensation.

We also have **Maximum Weekly Hours** which are the number of service hours that a recipient is authorized per workweek. This number is calculated by dividing the recipient's monthly authorized hours by four.

This calculation is a guideline to inform recipients of the maximum number of hours their providers can work in a workweek. For example, a recipient with 200 monthly authorized hours has "up to" 50 maximum weekly hours available. The "up to" is important because each month varies in length. The calculation works evenly for the month of February, which has 28 days and divides equally into four standard 7-day weeks. However, since most months are slightly longer than four weeks, the maximum weekly hours won't always equal the actual hours worked in a week. Recipients need to allocate their authorized monthly hours throughout the month to ensure they have enough hours to cover their authorized services until the end of the month. This is especially important in those months with 30 and 31 days as there needs to be enough hours remaining for recipients' providers to work and continue providing care to them.

Two other points to make with regard to maximum weekly hours: for a recipient with only one provider and that provider does not work for other recipients, then the maximum weekly hours will be their monthly authorized hours divided by four. For a provider who works for more than one recipient, that provider cannot work more than a total of 66 hours per workweek.

Beginning **February 1<sup>st</sup>, 2016**, recipients will receive a notice in the mail showing their maximum weekly hours. This notice is called the **IHSS Program Recipient Notice of Maximum Weekly Hours**, known as the **SOC 2271A**. Providers will also receive a separate notification in the mail showing the maximum weekly hours for each recipient they work for and the services they may provide during those hours. This notification is called the **IHSS Program Provider Notification of Recipient Hours and Services and Maximum Weekly Hours**, also known as the **SOC 2271**.

Now let's define a few more terms before moving on.

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Providers are now eligible to receive **overtime** pay. The overtime pay rate is calculated at one and a half times the regular pay rate. Providers will be paid at the overtime rate for all hours worked over 40 hours in a workweek. However, there is a limit on how much overtime will be paid. We'll discuss these limitations later in this video.

Providers who work for more than one recipient at different locations on the same workday are now eligible to receive **travel time** pay. A provider may be paid up to a total of **7 hours of travel time per workweek**. Travel time is the time it takes for a provider to travel directly from providing services to one recipient to providing services for another recipient on the same workday.

Travel time paid to providers will not be deducted from their recipients' monthly authorized hours.

Beginning May 1<sup>st</sup>, 2016, any provider who submits a timesheet reporting hours that go over the workweek or travel time limits will receive a violation with a notice of how to request a county or State review.

It's important that providers follow all of the overtime and travel time limitations to avoid receiving a violation.

### Section 3: Forms

Now that we have reviewed the key terms, let's talk about the new and revised forms resulting from the changes to the IHSS program.

We will review three important forms and their due dates in this video; the revised **IHSS Program Provider Enrollment Agreement, also known as the SOC 846**, the **IHSS Program Provider Workweek and Travel Time Agreement, also called the SOC 2255**, and the **IHSS Program Recipient and Provider Workweek Agreement, also known as the SOC 2256**. Providers should make sure to complete and submit all of the forms that apply to them.

Although providers signed the SOC 846 when they first became an IHSS provider, they must read and sign the revised SOC 846 that was recently sent to them to show they understand the new workweek and travel time limits.

The revised **IHSS Program Provider Enrollment Agreement** explains the new workweek limitations. By signing this agreement, providers acknowledge that they have read **and** understand these new limits.

- **ALL** IHSS providers are required to complete, sign and return this agreement to the county by **April 15<sup>th</sup>, 2016**.

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- If providers do not return the signed agreement by **April 15<sup>th</sup>, 2016**, they may be terminated as an IHSS provider as of **May 1<sup>st</sup>, 2016**, and if terminated, they will not be paid as an IHSS provider.
- New providers attending orientation after **April 15<sup>th</sup>, 2016**, will need to complete and submit this agreement before they receive timesheets.

Providers who work for more than one recipient will also need to fill out the **IHSS Program Provider Workweek and Travel Time Agreement**. This agreement explains the workweek, 7 hour travel time limits, and includes sections for providers to plan workweek schedules and record the estimated travel time between recipients.

- Completing this agreement will help make sure that providers do not work or travel more than allowed for each workweek.
- Also, by submitting this agreement, providers can help make sure that they will receive a Travel Claim Form, which will be reviewed later.
- And remember, this agreement will also prevent possible delays in payment and help providers avoid violations.

Recipients who have more than one provider must complete and submit the **IHSS Program Recipient and Provider Workweek Agreement**. This agreement lets the county know how many hours each provider will work for the recipient each workweek. Recipients must list all of their providers on this agreement.

- Recipients and each of their providers must sign the same form and return it to their local county IHSS office.

Recipients and providers must make sure to complete and submit all of the agreements that apply to them. For more information, contact your local county IHSS office or IHSS Public Authority.

### **Section 4: Timesheets & Tips**

Now that we've reviewed these forms, it's time to turn our attention to timesheets and how to correctly fill them out.

As a rule, it's a good idea for each provider and recipient to keep a record of the hours and minutes worked each day. This will help ensure accurate completion of timesheets.

The first rule when completing timesheets is to always use a standard ball point pen with black ink. Do not use a pencil, felt tip marker, or ink color other than black.

Ok, let's have a look at a sample timesheet.

Notice first that the form is arranged in four blocks, one for each workweek. Also notice that the blocks are labeled by date and day of the week beginning on Sunday and ending on Saturday. Again, using a black ball point pen, enter the number of hours and

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minutes worked each day in the spaces provided on the timesheet. Be sure that all entries remain inside the boxes.

Add up the total number of hours and minutes worked per week and enter this number at the bottom of each workweek under the "Total" section. Make sure the total hours don't add up to more than the hours assigned by the recipient.

Once the hours are entered, both the recipient and provider must sign and date the back of the timesheet.

The last step is to mail the timesheet back in the envelope provided.

Do not fold or tear the timesheet. Instead, carefully cut the timesheet along the dotted line, place it into the envelope, add a stamp, and mail.

Proper completion of timesheets will ensure prompt processing and payment. Instructions are printed on the timesheet, but here are some helpful tips:

1. Only use black ink.
2. Both the recipient and provider must sign and date the back of the timesheet.
3. Cut along the dotted line.
4. Do not fold the timesheet
5. Only enter hours and minutes for each day worked on timesheets.
6. Only mail one timesheet per envelope.
7. Place the correct postage on the outside of the envelope.

We hope these tips will help providers in correctly completing and submitting their timesheets.

### **Section 5: Travel Claim Form**

Now that we've reviewed timesheets, let's talk about travel time.

Providers are now eligible to receive up to 7 hours of travel time pay for each workweek when they work for more than one recipient at different locations on the same day, and travel directly between the two recipients to provide services.

Travel time does not include the time it takes providers to travel from their own home to the location where they provide services for a recipient or back home after their work is completed.

A provider's time spent traveling between recipients' locations does not count toward the maximum weekly hours and is not deducted from any recipient's monthly authorized hours.

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If providers claim more than 7 hours of travel time in a workweek, they will be paid for the excess hours, but will receive a violation. To claim travel time, providers will need to fill out a **Travel Claim Form**.

Providers who are eligible to receive paid travel time will be sent a Travel Claim Form in the same envelope with their timesheets for each recipient they work for.

Travel time is claimed on the Travel Claim Form of the recipient that providers are traveling **to**. For example, if it takes the provider 30 minutes to travel from Recipient A to Recipient B, the provider would claim the 30 minutes of travel time on the Travel Claim Form for Recipient B.

In order for Travel Claim Forms to be paid, timesheets need to be processed first. Travel Claim Forms can either be submitted with the corresponding timesheet for the same pay period or after that pay period.

Make sure completed and signed Travel Claim Forms are mailed to the correct address.

### **Section 6: Adjusting Hours & County Approvals**

Now that we've seen how to fill out timesheets and Travel Claim Forms, let's discuss workweek limitations in more detail.

Recipients are authorized a certain number of hours per month. When we introduced the term, "Maximum Weekly Hours," we explained that recipients will receive an informational notice in the mail beginning February 1<sup>st</sup>, 2016, showing their maximum weekly hours based on how many service hours they're authorized each month.

Within certain limits and depending on recipients' health-related needs, they may authorize their providers to work more or less than their maximum weekly hours. **Recipients may move hours from week to week as long as their providers do not work more than the monthly authorized hours.**

In some cases, recipients need to get county approval first. In other cases, recipients may adjust their providers' hours without getting county approval. Let's discuss this further.

It's important that recipients and providers know when it's necessary to get county approval. Recipients **must get county approval** to adjust their providers' weekly work hours when the change requires the providers to work:

- More than 40 hours in a workweek if the recipient's maximum weekly hours are 40 hours or less, or

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- More overtime hours in the month than they would have normally worked.
- For example, if the maximum weekly hours are 40 or less, then there are no approved overtime hours and any changes resulting in the provider working more than 40 hours in a workweek will require county approval.

However, recipients **may** authorize an adjustment to their providers' weekly work hours **without county approval** when all three of the following conditions are met:

- There is only one provider;
- The provider doesn't work for any other recipients; **and**
- The provider's weekly work schedule is adjusted in the remaining workweeks of that month to make sure they don't work more than the monthly authorized hours or the approved overtime hours.

Here's another example. If the maximum weekly hours are 50, then a total of 10 overtime hours per week is already approved. Forty hours of straight time and ten hours of overtime for a maximum weekly hours of up to 50 hours per week.

Therefore, over the month, there are a total of 40 hours of overtime available that the provider may work without the recipient seeking county approval.

In summary, so long as the provider does not work more than the recipient's total monthly authorized hours or overtime approved by the county, the provider's timesheet will be processed as usual.

However, if more hours are worked without county approval, the provider will still be paid but they will receive a violation. As we will learn later in the Violations segment of this video, three violations will result in a three-month suspension from the program. A fourth violation will result in a one-year termination.

Here's a tip for providers when working with their recipients to adjust hours:

Ask this question, does this change increase the amount of overtime I'm paid beyond my recipient's approved overtime hours?

Providers might answer:

- If I work less than 40 hours, it won't have any impact so I don't need county approval; or
- If I work a lot of hours each month, like 283, shifting hours from one week to the next does not change my approved monthly number of overtime hours.

In addition to understanding how authorized service hours may be adjusted, it's also important to know some other workweek limitations.

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Recipients are responsible to assign hours to each provider and make sure their providers only work the total number of weekly hours assigned to them as documented in this agreement.

Recipients and providers need to ensure that all of the hours worked do not exceed the total monthly authorized hours.

Let's look at the case of providers who work for more than one recipient.

These providers can work up to a maximum of 66 hours a week.

For example, if a provider is assigned 40 hours per workweek from Recipient A, this provider can only be assigned a maximum of 26 hours per workweek from Recipient B.

The **66 hourly weekly maximum limitation only** applies to providers who work for multiple recipients.

If a provider works the maximum weekly hours of 66 hours per workweek and one of their recipients asks them to work additional hours, the provider can only do so if they reduce the number of hours they work for another recipient. Otherwise the provider will have to tell the recipient that they must get another provider to work the additional hours.

Another case to consider is of a recipient who has multiple providers that only work for this recipient.

What happens if one of those providers is ill or takes vacation? In this case, the recipient can adjust hours to the other providers without county approval so long as the recipient's total monthly hours authorized are not exceeded.

In a different situation, a provider who only works for one recipient can get a violation when their recipient adjusts their hours, and this results in excessive overtime hours worked or an increase in this recipient's overall monthly hours, and county approval has not been obtained.

Lastly, recipients may contact their local county IHSS office to request a temporary adjustment to their maximum weekly hours if they must make changes to their provider's weekly schedule due to unexpected or unusual situations to help meet their health-related needs. Contact your local county IHSS office for more information on how to make these changes.



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## Section 7: Violations

Remember, it's important that the recipients and providers follow all of the overtime and travel time limitations to prevent getting a violation. A violation could cause a provider to be suspended from the program or terminated as an IHSS provider.

Some of the actions that will cause providers to get a violation are:

- Working more than 40 hours in a workweek for their recipient whose "maximum weekly hours" are 40 hours or less, and therefore, has no approved overtime;
- Working more than a total of 66 hours in a workweek when they work for more than one recipient; or
- Claiming more than 7 hours of travel time in a workweek.

If the county determines that a provider has violated the weekly overtime and/or travel time limitations, the county will send the provider a violation notice with information on how to request a county review. A notice will also be sent to all of the recipients that the provider works for informing them of their provider's violation and explaining why the provider received it.

For each violation received by the provider, there will be a consequence:

- For the **first violation**, the provider and each of their recipients will get a notice of the violation with information on how to request a county review.
- If a **second violation** occurs, the provider will have a **choice** to complete a **one-time** training about the workweek and travel time limits within 14 calendar days of the date of the notice. If the provider chooses to complete the training, they will avoid receiving a second violation. If they do not complete this training, they will receive a second violation.
- If a **third violation** occurs, the provider will be suspended as an IHSS provider for three months.
- If a **fourth violation** occurs, the provider will be terminated as an IHSS provider for one year.

**If the provider's actions result in more than one violation during a calendar month, it will only count as one violation.**

If providers receive a violation, they have ten business days from the date of the violation notice to request a county review. Once the county receives the request for review, it has ten business days to review and investigate the violation and send providers a notice stating whether the violation will remain or if it will be removed.

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For the third and fourth violations, if the county doesn't remove the violation, providers may request a review by the California Department of Social Services, or CDSS, within ten business days of the date of receiving the county notice. The county notice will explain how providers may request a review by CDSS.

Once providers have received a violation, the violation will remain on their IHSS record. However, after one year, if they don't receive another violation, the number of violations they have received will be reduced by one.

- As long as providers don't receive any additional violations, each year after the last violation was removed, the number of violations will be reduced by one, and
- If providers receive a fourth violation and are terminated as an IHSS provider for one year, when the year is up and they apply again to be an IHSS provider, they must:
  - Re-submit an application; and
  - Complete all of the provider enrollment requirements, including the criminal background check, provider orientation and all required forms.
  - Also, their violations count will be reset to zero.

Let's recap. To prevent a violation, providers should avoid:

- Working more than 40 hours in a workweek without his/her recipient getting approval from the county when the recipient is authorized less than 40 hours in a workweek.
- Working more hours for a recipient than he/she is authorized in a workweek and this causes the provider to work more overtime hours in a month than they normally would.
- Working for more than one recipient and working more than 66 hours in a workweek.
- Claiming more than 7 hours travel time in a workweek.

For more information regarding violations, contact your local county IHSS office or IHSS Public Authority.

### **Section 8: Wrap-Up**

We've now completed our review of the IHSS program changes.

As a helpful reminder, here are some key points from our review:

- The defined workweek is from Sunday at 12:00AM, to the following Saturday at 11:59PM.
- Providers must not work more than their assigned total maximum weekly hours without appropriate approval.
- Providers who work for more than one recipient cannot work more than a total of 66 hours per workweek.

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- ☑ Providers must not travel more than 7 hours each workweek.
- ☑ Travel time is documented on the Travel Claim Form for the recipient that the provider is traveling to.
- ☑ Both recipients and providers need to understand when county approval is necessary for adjusting hours.
- ☑ Violations are the result of not following IHSS program overtime and travel time limitations.

Correctly completing IHSS timesheets will help providers receive timely payments, avoid claiming hours above a recipient's maximum weekly hours, and prevent mistakes which may result in unnecessary violations or termination from the IHSS program.

We hope this video has helped IHSS recipients and providers better understand the changes in the IHSS program.

For additional questions, contact your local county IHSS office or IHSS Public Authority, or visit the California Department of Social Services In-Home Supportive Services website.