NOTE:

The materials and opinions presented by the speaker represent the speaker’s views, are for educational and informational purposes only.

These opinions are not legal advice and should not be used for legal guidance.

In all cases, legal advice applicable to your agency’s own specific circumstances should be sought.
WHAT THE REMOVAL OF THE COMPANIONSHIP EXEMPTION MEANS

Companionship Exemption has been prohibited for use by third-party employers

- Beginning Jan 1, 2015 employer must pay caregivers minimum wage and overtime
- Definition of companionship services has been narrowed
- Changes to live in and pay to live in employees
- Changes to employer requirements for recordkeeping regarding live in domestic service employees

TIMELINE

Phase 1
- Understand the Changes

Phase 2
- Build Your Strategy

Phase 3
- Develop Communication Messages

Phase 4
- Implement Strategies and Communicate Changes

Jan 2015
COUNTING HOURS WORKED
JAN 2015

Sleep time
Travel time
Meal Periods
Break Time
Off Duty time

*Seek legal assistance to be in compliance with state W&H
** CA W&H changes began Jan 2014

HOURS WORKED

Refers to all the time for which an employee is entitled to be compensated under FLSA (See FLSA Fact Sheet 22 - http://www.dol.gov/whd/regs/compliance/whdfs22.pdf)

It includes:

✓ All time required to be on duty or on premises or at a particular workplace.
✓ All the time the employee is “suffered or permitted” to work; the work does not have to be requested.
✓ The “regular rate” is the hourly rate that the employee is actually paid for working; it can change weekly depending on the payment arrangement with the employee.
WHO “MAY” BE ABLE TO CLAIM THE COMPANIONSHIP EXEMPTION?

Clients  
A member of the clients family  
A member of the clients’ household

NO THIRD PARTY EMPLOYER HAS THE EXEMPTION

after Jan 2015

BOTTOM LINE ON OVERTIME

* There is no way to avoid paying caregivers overtime for over 40 hours worked in a week
* The impact will probably be less than you think
* 16 states are already required to pay overtime and they have successful businesses

Build your strategies now so you will be ready for 2015
SOURCES OF LIABILITY

DOL Audits
- Driven by a complaint or a routine audit

Damages & Fees
- *Back wages, up to twice that amount in damages and employee’s attorney fees can be included in your liability

Legal Risks
- Caregiver can retain an attorney as an individual or on behalf of a class of caregivers

*Personal Liability
- There can be personal liability for owners and members of management who are involved with compensation matters. This is not avoided by being incorporated or an LLC.

STRATEGIES
STRATEGIES FOR REDUCING OVERTIME COSTS

- **Schedule** multiple caregivers on clients over 40 hrs of service in a week
- **Pass** overtime costs to clients with a bill rate of 1 ½ times the regular bill rate
- **Schedule** shorter shifts
- **Pay** a reduced rate for travel and training time – *at or above minimum wage*

MORE STRATEGIES FOR REDUCING OVERTIME COSTS (MORE)

- **Manage** caregiver time when assigned multiple clients to avoid overtime
- **Use** scheduling software to alert you when a caregiver nears overtime hours
- **Avoid** or minimize travel time
COST OF PASSING ON OVERTIME TO THE CLIENT

Charge 1½ times your regular bill rate

Client service agreement must include this bill rate and the client must sign the agreement

COST OF PASSING ALL OVERTIME COSTS BY RAISING BILL RATE

1. Review a 13 week period.
2. Calculate the total amount of revenue billed for the 3 month period of time (accrual method)
3. Calculate the total number of hours per caregiver over 40 hours per week for the 3 month period
4. Multiple these hours by your *0.5 X your bill rate – multiply by your bill rate
5. Divide this number by the number of hours billed for the *13 week period
6. This is the amount of increase you need to add to your bill rate to cover the cost of overtime.
## INDIVIDUAL CAREGIVER OVERTIME ANALYSIS

<table>
<thead>
<tr>
<th>CAREGIVER</th>
<th>Week 1</th>
<th>Week 2</th>
<th>Week 3</th>
<th>Week 4</th>
<th>Week 5</th>
<th>Week 6</th>
<th>Week 7</th>
<th>Week 8</th>
<th>Week 9</th>
<th>Week 10</th>
<th>Week 11</th>
<th>Week 12</th>
<th>Week 13</th>
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<tbody>
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</tr>
</tbody>
</table>

Reason Code:
1. Client Preference
2. New Client
3. Call-Off
4. Unable to Bill Due to Client
5. Caregiver Requested to Call-Off
6. Not Enough Overtime

## EXAMPLE 1

**Cost of Passing all Overtime Costs by Raising Bill Rate**

Based on Ten Employees

<table>
<thead>
<tr>
<th></th>
<th>Reg</th>
<th>O/T</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Weekly Hours</td>
<td>370</td>
<td>101</td>
</tr>
<tr>
<td>Number of Weeks</td>
<td>13</td>
<td></td>
</tr>
<tr>
<td>Total Hours</td>
<td>810</td>
<td></td>
</tr>
<tr>
<td>Hourly Invoice Rate [Avg]</td>
<td>22.00</td>
<td></td>
</tr>
</tbody>
</table>

2. Total Revenue Billed: $105,830.00

3. Total Overtime Hours: 110 hrs. per week x 13 weeks

4. Total increase in Billing Due to Overtime: $1,430.00 (110 O/T hours * 22.00 * 0.5)

5. Hourly Increase Due to Overtime: $0.30 * $1,430 / 4810 hrs.

6. Amount of increase needed to add to your bill rate to cover cost of overtime: $0.38

New bill rate to cover cost of Overtime: $12.38 + $0.38

Original bill rate of $12.00 plus added cost of overtime: $12.38
EXAMPLE 2
Cost of Passing all Overtime Costs by Raising Bill Rate
Based on Thirty Caregivers

<table>
<thead>
<tr>
<th>Reg</th>
<th>O/T</th>
</tr>
</thead>
<tbody>
<tr>
<td>1,030</td>
<td>100</td>
</tr>
</tbody>
</table>

1. Weekly Hours 1,030
   Number of Weeks 13
   Total Hours 13,390
   Hourly Invoice Rate (Avg.) 22.03

2. Total Revenue Billed 294,560.00

3. Total Overtime Hours 390 30 hrs. per week x 13 weeks

4. Total Increase in Billing Due to Overtime 4,290.00 390 O/T hours * 22.00 * 0.5

5. Hourly Increase Due to Overtime 0.32 **4,290 / 13,390 hours

6. Amount of increase needed to add to your bill rate to cover cost of overtime 0.32

   New bill rate to cover cost of Overtime $22.32

Original bill rate of $22.00 plus added cost of overtime $0.32

CAREGIVER RECRUITMENT STRATEGIES

估算你需要增加多少护理人员来减少加班。

使用你估算的护理人员工作时间，超过40小时/周来确定你需要多少额外的护理人员。

大多数已经成立的办公室需要增加大约1/3更多护理人员来减少加班。
HOW DO I DETERMINE HOW MANY ADDITIONAL CAREGIVERS I NEED?

<table>
<thead>
<tr>
<th>Estimating Additional Caregivers based on Control and Growth</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Estimate Growth based on 13 weeks compared to same period last year.</td>
</tr>
<tr>
<td>Growth must be in hours</td>
</tr>
<tr>
<td>Previous Period: 1500</td>
</tr>
<tr>
<td>Current Period: 1600</td>
</tr>
<tr>
<td>Growth (hrs.): 100</td>
</tr>
<tr>
<td>Hrs. per Caregiver: 10</td>
</tr>
<tr>
<td>Additional Caregivers Required: 4</td>
</tr>
<tr>
<td>Calculation Rounded up to nearest whole number</td>
</tr>
</tbody>
</table>

2. Eliminate Overtime by increasing Caregiver staff. Calculate previous 13 week period Overtime. Calculate additional CGs needed by adding 1 new CGs for every 15 hours overtime per week.

<table>
<thead>
<tr>
<th>Previous 13 weeks total hours: 1,020</th>
<th>O/T: 20</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hours per Additional Caregiver: 15</td>
<td></td>
</tr>
<tr>
<td>Additional Caregivers needed: 2</td>
<td></td>
</tr>
</tbody>
</table>

3. Factor in Caregiver Turnover.

<table>
<thead>
<tr>
<th>Terminations: 12</th>
<th>For prior 12 month period, total CG terminations</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of Caregivers: 160</td>
<td>Divide terminations by the total number of CG at end of period</td>
</tr>
<tr>
<td>Annual Caregiver Turnover Rate: 18%</td>
<td></td>
</tr>
<tr>
<td>Additional Caregivers Needed for 13 Week Period due to Caregiver Turnover: 8</td>
<td></td>
</tr>
<tr>
<td>Total Additional Caregivers Needed due to Business growth, eliminating overtime, and Caregiver Turnover: 14</td>
<td></td>
</tr>
</tbody>
</table>
CAREGIVER RECRUITMENT STRATEGIES

- **Word of Mouth** – Ask your best caregivers to recruit others who may work as well as they do. Ask your applicants where they are looking for job leads.

- **Internet Recruitment Sites**: Craigslist, Snag a Job.com, Career.com

- **Print Advertising**: Newspapers (weekly or daily), Magazines, Church Bulletins, Penny Saver bulletins

- **Social Media**: Facebook, Twitter. *Social media is especially effective when you are known in your community.*

- **Community Contacts**

- **Job Fairs**: Bring applications with you on site.

- **Schools** that train Home Health Aides, Certified Nursing Assistants (CNA), Personal Care Assistant (PCA). *They must have previous work experience in healthcare.*

- **Phone Tear Off & Flyers** (available on Resource Center): See what works where you are.
  - Grocery stores, laundromats, pharmacies, community colleges

- **Network with Home Health Agencies**, hospices, nursing homes, assisted living—ask them to refer applicants who they can’t hire to you.

HOW TO DEAL WITH CHANGES TO THE LIVE IN EXEMPTION
LIVE IN

Choose your live-in clients carefully.
CGs will be entitled to OT after *40 hours worked
Some cases are more appropriate for 24 hour care than for live-in.
Sleep time: Adhere to the FLSA exemption for sleep time.

“If the sleeping period is interrupted by a call to duty, the interruption must be counted as hours worked. If the period is interrupted to such an extent that the employee cannot get a reasonable night’s sleep, the entire period must be counted. “...If the employee cannot get at least 5 hours’ sleep during the scheduled period the entire time is working time.” 29 C.F.R. § 785.22 (b)

The Employer is responsible for clear documentation for hours worked

LIVE IN

Basic Staffing Strategies
• 1 CGs for 7 days → maximum overtime
• Team of 2 CGs → moderate overtime
• Team of 3 CGs → minimum overtime

Use Calculator to determine daily bill rate, including OT costs, based on your choice of a staffing model.

<table>
<thead>
<tr>
<th></th>
<th>1 CG</th>
<th>2 CG</th>
<th>3 CG</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>$295.51</td>
<td>$270.23</td>
<td>$255.06</td>
</tr>
</tbody>
</table>
## Overtime Costs by Raising Bill Rate

**Utilize One LiveIn Caregiver**

<table>
<thead>
<tr>
<th></th>
<th>Reg</th>
<th>O/T</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Weekly Hours</strong></td>
<td>112</td>
<td>40</td>
</tr>
<tr>
<td><strong>Daily Caregiver Wage Rate</strong></td>
<td>120.00</td>
<td></td>
</tr>
<tr>
<td><strong>Hourly Caregiver Wage Rate</strong></td>
<td>7.50 Daily Rate /16</td>
<td></td>
</tr>
<tr>
<td><strong>Labor Payroll Expenses</strong></td>
<td>1.35 18% of Caregiver Hourly Wage</td>
<td></td>
</tr>
<tr>
<td><strong>Total Labor Burden</strong></td>
<td>8.85</td>
<td></td>
</tr>
<tr>
<td><strong>Weekly Caregiver Cost</strong></td>
<td>991.20 112 hours * $8.85</td>
<td></td>
</tr>
<tr>
<td><strong>Total Overtime Hours</strong></td>
<td>72</td>
<td></td>
</tr>
<tr>
<td><strong>Weekly O/T Cost</strong></td>
<td>318.60 72 O/T hours * 8.85 * 0.5</td>
<td></td>
</tr>
<tr>
<td><strong>Daily Caregiver Overtime Cost</strong></td>
<td>45.51 Weekly O/T Cost / 7</td>
<td></td>
</tr>
<tr>
<td><strong>Current Daily Live In Bill Rate</strong></td>
<td>250.00</td>
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</tr>
<tr>
<td><strong>New Daily LiveIn Bill Rate</strong></td>
<td>295.51</td>
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</table>

## Overtime Costs by Raising Bill Rate

**Utilize Two LiveIn Caregivers**

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<tbody>
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<td><strong>Weekly Hours</strong></td>
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<td>80</td>
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<tr>
<td><strong>Daily Caregiver Wage Rate</strong></td>
<td>120.00</td>
<td></td>
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<tr>
<td><strong>Hourly Caregiver Wage Rate</strong></td>
<td>7.50 Daily Rate /16</td>
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<td><strong>Labor Payroll Expenses</strong></td>
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<tr>
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<td>8.85</td>
<td></td>
</tr>
<tr>
<td><strong>Weekly Caregiver Cost</strong></td>
<td>991.20 112 hours * $8.85</td>
<td></td>
</tr>
<tr>
<td><strong>Total Overtime Hours</strong></td>
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<td></td>
</tr>
<tr>
<td><strong>Weekly O/T Cost</strong></td>
<td>141.60 32 O/T hours * 8.85 * 0.5</td>
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<tr>
<td><strong>Daily Caregiver Overtime Cost</strong></td>
<td>20.23 Weekly O/T Cost / 7</td>
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</tr>
<tr>
<td><strong>Current Daily Live In Bill Rate</strong></td>
<td>250.00</td>
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</tr>
<tr>
<td><strong>New Daily LiveIn Bill Rate</strong></td>
<td>270.23</td>
<td></td>
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</tbody>
</table>
Going Independent Contractor - 1099
Creating an EE agency and an IC agency side beside side.
Artificial low rates of pay
Meal and Lodging Credit
Scaling caregiver wages based on number of hours worked
IDEAS THAT JUST WON’T WORK

- Asking Caregivers to sign away OT rights
- Actively negotiating with another agency to share caregivers.
- Overtime is calculated based on the workweek, not a two week period, therefore alternating workweek agreements do not work.

It would not be permissible to pay a lower rate for a visit of 5 days than for a visit of 2 days unless you can establish that the work is different between the two.

If the work is essentially the same, having the rate of pay vary inversely to the number of hours worked is an illegal pay arrangement.

STEPS TO A SUCCESSFUL TRANSITION

1. Get your office staff committed and mentally prepared for changes
2. Create your staffing models and financial plan.
3. Conduct your recruitment analysis.
4. Educate your staff.
5. Create an action outline. Include any changes to forms, employee handbook, and staff and caregiver orientation.
6. Review action outline with staff and revamp based on input. Revise roles and delegate action items.
7. Anticipate Issues
8. Evaluate Results at each stage.
**STEPS TO A SUCCESSFUL TRANSITION**

Create communication plan and incorporate in your action plan.

Implement Communication Plan

Raise Bill Rates and New Staffing Models on all NEW cases. (raise for existing cases in Jan 2015)

*February 2015*

Celebrate your Success!

---

**CHANGES TO OFFICE OPERATIONS**

<table>
<thead>
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<th>October</th>
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<th>Nov to Dec</th>
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<td>Staffing Models</td>
<td>Handbooks</td>
<td>Education of caregivers</td>
<td>Providing Communication Plan for Clients, Caregivers, Referral Sources</td>
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<tr>
<td></td>
<td>Forms</td>
<td>Transition New clients</td>
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<td>Operations</td>
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### WHAT’S NEXT

- Have a financial plan
- Have your ducks in row (strategy)
- Prepare your office staff
- Implement communications plan
- Anticipate issues with stakeholders
- Evaluate issues & results at each stage
- Celebrate your success! Feb 2015

---

Please be aware costs related to overtime issues and the employer mandate will have to be calculated and figured into your estimated labor costs in 2015.

Identify tools and resources to estimate the additional labor costs that you will have to pass on to your clients.
BUILD YOUR STRATEGY!

Even if you’re on the right track, you’ll get run over if you just sit there.

--Will Rogers

NAHC Annual Meeting
October 2014

HOW TO BUILD A SUCCESSFUL STRATEGY
REMOVAL OF COMPANIONSHIP EXEMPTION

Pat Drea
COO

VisitingAngels®