

## California Workplace Law Blog

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### California Court of Appeal Clarifies Personal Attendant Overtime Exemption

A good case for employers was recently issued with respect to the Personal Attendant overtime exemption. On May 14, 2012, the California Court of Appeal, Fourth Appellate District held that an individual who is exempt from overtime under the Personal Attendant overtime exemption with respect to Wage Order 15 is not disqualified from the exemption by performing routine health related tasks including, but not limited to: taking the temperature of the elderly resident; checking the pulse; assisting with an over the counter blood sugar test (applicable to diabetics); and, providing reminders and supervising the taking of medication by the elderly resident. See, [Cash v. Winn \(CA4/1 D0586575/14/12\)](#). The Court made clear that, as long as such duties are less than 20% of a Personal Attendant's job functions, the individual does not lose the protections of the overtime exemption.

Wage Order 15, Section (2)(j) defines a "Personal attendant" as "baby sitters and means any person employed by a private householder or by any third party employer recognized in the health care industry to work in a private household, to supervise, feed, or dress a child or person who by reason of advanced age, physical disability, or mental deficiency needs supervision. The status of "personal attendant" shall apply when no significant amount of work other than the foregoing is required." The Court rejected the argument that a caretaker, who is not a licensed nurse, is disqualified from the Personal Attendant overtime exemption by performing "any form" of health care related services for an elderly client. While employers and families need to monitor if the case will be appealed by either party, it is a welcome clarification of the law for now.

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