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PERSONAL CARE ATTENDANT SERVICES

**A HANDBOOK FOR ACCESSING AND USING
PERSONAL CARE ATTENDANT SERVICES**

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A Handbook for Accessing and Using Personal Care Attendant Services

Alabama Council for Developmental Disabilities
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Preface

A personal care attendant (PCA) can have an important role in an individual's quality of life. The PCA interacts with a person with a significant disability on a very intimate level. The well thought out selection of the right individual and ongoing effective communication with the PCA is critical for a successful experience. This handbook was developed to offer you assistance and guidance in all aspects of locating a personal care attendant, making the right decision in the hiring process, training the attendant and managing your employee. Important information on the Fair Labor Standards Act and maintaining employee records is included to provide a comprehensive handbook.

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Yes, You Need a Job Description

A job description benefits both you and your PCA by clearly defining your expectations of the specific duties to be performed.

To manage a personal care attendant (PCA), you need to look at the ways you perform your daily activities. If you do this, you will be able to start building a realistic picture of the reason you want to employ a PCA. This review of your abilities/limitations and likes/dislikes will help you locate the right person for the job. Once you have looked at your needs and lifestyle, you can develop a job description for your PCA.

Reasons you need to create a job description:

- The process will help you develop a realistic view of your needs and lifestyle.
- It will give you a basis for interviewing applicants.
- It will help to keep the interview focused on job duties.
- It provides a potential employee a clear idea about what the job requires.
- After the attendant is employed, the job description can be a checklist of duties/responsibilities of the job.
- It can be a valuable tool in providing feedback for the attendant and in doing a performance evaluation.
- Your expectations can be clarified and remain in focus if based on a job description.
- It can help settle disagreements regarding job duties and responsibilities.

Sample Job Description

Job Title

Personal Care Attendant

Primary Function

To assist an individual with a disability in performing activities of daily living according to personal need.

Supervision

Works under the direct supervision of the consumer/employer.

Education

- High school diploma or GED (preferred but not required)
- Completion of certified nursing attendant program is preferred but not required

Experience

Six months to one year of work experience as a PCA is preferred, but not required

Skills

- Effective written and oral communication skills
- Ability to consistently be at work and on time
- Ability to maintain a confidential working relationship
- Good personal organizational skills
- Ability to follow oral and written instructions

Knowledge

- Working knowledge of signs and symptoms of common illnesses and conditions
- Working knowledge of first aid, safety and emergency procedures
- Equivalent combination of education, experience, skill and knowledge will be considered

Job Duties

- Assist with bathing and/or toileting activities
- Assist with grooming/dressing activities
- Assist with transfers and mobility activities as directed
- Assist with household chores
- Assist with transportation activities
- Assist with meal preparation and dining
- Provide assistance with financial and business activities as directed
- Assist with medications as directed
- Assist in basic first aid procedures

Terms of Employment

Part time

Performance Evaluation

Performance will be evaluated by the consumer/employer, based on job description and/or contract.

How to Locate a Personal Care Attendant

If you are creative, you will find many ways to locate potential attendants. There are many different ways of “advertising” that include:

- Word of mouth
- Local newspapers (learn about writing an ad in another section)
- Local newsletters – support groups or disability groups newsletters
- Agencies – don’t overlook non-profit or for-profit that might screen or refer applicants
- Social service agencies
- Health care agencies
- Job services or employment offices
- Financial aid offices at colleges, universities, technical schools or similar places
- Rehabilitation centers
- Hospital or university nursing schools
- Nursing homes or assisted living facilities
- Churches or church organizations

How Do I Write an Ad, Anyway?

When it comes to writing an ad to hire your attendant, remember there is no right or wrong way to do it. You simply need to keep your needs in mind. Consider including any of the following that apply to you:

- Who – are you looking for?
- What – do you want your attendant to do?
- When – will the person be needed?
- Where – will the person be working?
- Pay – how much are you going to offer?
- Amount of training needed
- A contact person's name
- Phone number to call
- Preferred time to call
- Part-time
- Live-in
- Preference for male or female applicant
- Smoker or nonsmoker preferred?
- Animals/pets

Remember that you want your ad to attract the attention of the potential attendant. What is it about your ad that would make someone want to respond? You may want to stress something positive about the job as a heading. "Free furnished apartment" for example. Make the ad direct, clear, short so it will be easy to understand. Use descriptive words – dependable, reliable, and punctual. Check your local paper to find out the days that are best to run your ad. In general it will be weekends and Wednesdays.

Sample Ads

Earn money by assisting others. Assist an individual with activities of daily living. Dependable, experience preferred, will train. Four hours per day, flexible. Call Mary at 333-3333.

Free room and board. Assist an individual with dressing, grooming, driving and other activities of daily living. Dependable, honest, works well with others. Ideal for student as most of days are open. Call Joe at 444-4444.

Enjoy working with others? Attendant needed to prepare simple meals, perform light household chores, run errands. Hours and pay negotiable. Call Lisa at 555-5555.

Sample Personal Care Attendant Application

All information on this application will be kept confidential. Please print all information.

Personal information

Name: _____

Current Address: _____

City: _____ State: _____ Zip Code: _____

Mailing Address (if different from above:

City: _____ State: _____ Zip Code: _____

Phone numbers (include area code)

1. _____

2. _____

E-mail address if available: _____

Do you have a Social Security card? () yes () no

Do you have a valid driver's license? () yes () no

Can you perform the duties of the job described in the attached job description with or without reasonable accommodation? () yes () no () uncertain

Have you worked with people with disabilities? () yes () no

If yes, what did you do? _____

Describe any training or experience you have had as a PCA:

Are you seeking (check all that apply)

() part time work? () permanent work? () temporary work?

Will you work as a live-in PCA? () yes () no

What hours/days are you available to work? _____

If there are certain times you cannot work, please list them: _____

Are you able to assist an individual with a disability with transportation?
() yes () no

Education

Highest grade completed: _____ GED: _____

College: _____ Degree: _____

Special training: _____

Past Employment (please list your last three employers)

1. Employer's name: _____

Date employment began: _____ Date employment ended: _____

Supervisor's name: _____

Reason for leaving: _____

Phone number of supervisor: _____

2. Employer's name: _____

Date employment began: _____ Date employment ended: _____

Supervisor's name: _____

Reason for leaving: _____

Phone number of supervisor: _____

3. Employer's name: _____

Date employment began: _____ Date employment ended: _____

Supervisor's name: _____

Reason for leaving: _____

Phone number of supervisor: _____

If there is a past employer that you do not wish to have contacted, please list here: _____

Please give two references, other than a relative:

Name: _____

Address: _____

City: _____ State: _____ Zip Code: _____

Phone number: _____

Name: _____

Address: _____

City: _____ State: _____ Zip Code: _____

Phone number: _____

Have you been convicted of a crime other than a minor traffic violation?

() yes () no

Applicant's signature: _____

Date: _____

Information You Need to Make the Right Decision

Telephone Screening of Applicants

It helps to screen your potential attendant by telephone when possible. Telephone screening can save time for both you and the applicant. In the telephone screening, you should:

- Discuss important points of the job
- Find out information about the PCA
- Get a first impression of the person

Tips for Screening

- ***Always trust your instincts and your gut reaction.***
- Be friendly and pleasant.
- Check to see if the person has reliable transportation and if getting to work on time will be a problem. If your applicant has a long commute, you will want assurance that it will not interfere with the job.
- Make sure you let the applicant know if you plan to do a criminal background check.
- Discuss money and hours. If the applicant is not able to accept the hours or the pay, now is the time to find out. There is no need to interview someone who already finds the job unacceptable.
- Give a brief description of the job duties if the pay and hours are already determined to be acceptable.
- Set up a time to conduct a formal interview in person. Give directions and your address only to those you choose to interview. Set up the interview in a public place, such as a library or church for your first meeting.

The Interview

You are interviewing a stranger. Use common sense in setting up the face-to-face interview. Consider using a place other than your home for the interview. Prior to the interview, it will be helpful to consider the personal qualities you feel are important in a PCA. Keep in mind your feelings about:

- Trustworthiness
- Honesty
- Sense of humor
- Good attitude
- Common interests
- Dependability
- Ability to follow directions
- Good communication skills

Tips for Interviewing

- ***Be cautious about hiring someone on the spot. Be sure to check references first!***
- Try to make the situation as comfortable as possible.
- Explain your disability if you feel there is a need and you are comfortable doing so.
- Provide a job description.
- Ask about jobs the person currently has or has had in the past including the tasks performed, how the applicant felt about those tasks (likes/dislikes), if the person is currently working.
- Ask for at least two work references.
- Explain how you will evaluate job performance.
- Make notes as you interview.
- Inform the applicant if you are able to provide any benefits (time off, paid holidays, etc.)

Keep this in mind when checking references. Employers are limited in what they can reveal about current and former employees without written permission. The only information you will legally get from a former employer will be: date the person began work; date they left employment; and if they are eligible for rehire. But, check those references, no matter what. You will be surprised what the voice can tell you, regardless of the words!

Sample Interview Questions

The following sample questions will be helpful if you want to hire a live-in attendant. Many of the questions will be useful if you are just hiring someone to come and work in your home without living there. The questions are written to help you learn more about the applicant (his/her lifestyle and personal habits). Hopefully, a thorough interview will help you find a person with a lifestyle that fits your own.

Food and Eating Arrangements

- What kind of foods do you usually eat? Likes? Dislikes?
- Are you a good cook?
- Where do you shop for groceries?
- Do you eat at regular times or when you feel like it?
- How do you feel about eating together?
- If you like different foods than I do, how do you feel about preparing my meals as well as your own?

Transportation

- Can you drive or can you assist me in using public transportation?
- Do you have a valid driver's license? (Ask only when driving is necessary to the job)
- How do you feel about accompanying me on my errands?

Housekeeping

- Have you had experience with housekeeping and laundry?
- Do you like things very neat or are you not particular?
- Do you like a definite schedule for cleaning and laundry or do you prefer to be flexible?

Personal Needs

- Would it bother you to help me with bowel and bladder programs?
- Are there any areas of my personal needs with which you feel uncomfortable?

Personal Habits

- Do you smoke?

- Do you sleep late in the morning or get up early?
- What time do you usually go to bed at night?
- Are you a light sleeper?
- Do you go out to see your friends?
- Will you want to entertain your friends in my apartment/house? All the time? Some of the time? Never?
- Might you ever want a friend to stay overnight?
- Do you usually like for activities to be planned in advance or do you like to do things on the spur of the moment?
- What do you like to do for entertainment?
- Do you like to listen to music? What kind? At what volume?
- Do you like to watch TV?
- Do you like quiet surroundings?
- What hobbies do you have?
- Do you consider yourself a flexible person? Can you give examples?
- How do you react if you have to a change your plans at the last minute?
- (If relevant) How do you feel about pets?
- If I need assistance with reading, are you able to read printed text?
- Can you assist me in writing checks and other areas of money management?

About the Background Check

You may choose to find out if the person you want to hire has broken the law, i.e., shop lifting, traffic tickets, etc. Make sure that the person understands you may choose to conduct a criminal background check. This is something that you will need the person's permission to do. A sample consent form can be found on the next page.

Contact your local law enforcement agency for further information about the specific consent form to use, the cost and what information you can get from the background check.

Background Consent Form

I, _____, hereby authorize _____ and/or its agents to make an independent investigation of my background, references, character, past employment, education, criminal or police records, including those maintained by both public and private organizations and all public records for the purpose of confirming the information contained on my application and/or obtaining other information which may be material to my qualifications for employment, which may include Urine Substance Abuse Testing.

I release _____ and/or its agents and my person or entity, which provides information pursuant to this authorization, from any and all liabilities, claims or law suits in regards to the information obtained from any and all of the above referenced sources used.

The following is my true and complete legal name and all information is true and correct to the best of my knowledge.

Full Name Printed

Maiden Name or Other Names Used

Present Address (Street, City, State, Zip Code)	How Long?

Former Address	How Long?

Date of Birth:	Social Security Number:
Driver's License Number:	State of License:

Hiring and Training Your PCA

Agreements/Contracts

An agreement between the personal care attendant and the employer is important. It is a means of formalizing the relationship and clearly indicating the responsibilities of each. The agreement should be flexible. It should also contain the main responsibilities of the PCA as well as the employer. As the duties of the attendant change, the agreement should also be updated. It is good to review the agreement every six months, but at least annually. The following is a sample agreement. Other factors should be added or clarified according to personal need.

Sample Agreement

It is understood that the personal care attendant will carry out the duties and responsibilities listed in the job description.

Both the attendant and the employer will treat each other with mutual respect. Both will attempt to be flexible and work in solving problems as they arise.

The attendant agrees to work the following schedule of work and time off:

Hours/days off: _____

Hours/days to be worked: _____

Salary includes room, board, utilities, phone and \$ _____ per week and/or \$ _____ per _____.

Two weeks notice will be given by either person regarding termination of this agreement. This is an employment-at-will agreement _____(employer) can fire or terminate the personal care attendant with or without cause with two weeks notice. The personal care attendant may terminate employment with two weeks notice.

Signature of PCA Date

Signature of employer Date

Review date

Records You Need to Keep

The following is a list of several examples of records that need to be kept by you, the employer. This will be a very good time saving act.

- Certificate of training
- Application
- Contract
- Copy of driver's license (if applicable)
- References contacted
- Insurance (if applicable)
- Background check (if applicable)

You also need to set up a file for time keeping and payroll records. For further information visit www.dol.gov/esa/regs/compliance/whd/whdfs21.htm.

Relationship Roles

Defining the Relationship

When you hire a personal care attendant, it is important that you define the relationship roles. Defining the relationship means knowing your responsibilities and those of the attendant. As you are the one purchasing the services of the attendant, YOU are in charge! Your relationship may be one of friendship. First, your relationship must be one of an employer-employee. If the responsibilities are not clearly defined, problems will arise. It is not a matter of if, but when, the problems will surface.

Setting the Boundaries

As you define the relationship, it is important to set the boundaries of the relationship. Think of boundaries as the limits. Determine what your limits will be. Do you want a strictly business relationship? Friendship? It may be impossible for the relationship NOT to have the characteristics of both. It is important that the business relationship be primary. Most problems occur when the role of each person is unclear or when the roles change.

A part of setting boundaries is dealing with the issue of control. Control is an issue in almost all relationships. It is generally defined as managing, overseeing, or being in charge. You, as the employer, must have primary control. Control is NOT domination. Control involves managing and overseeing in order to accomplish a goal. It is important that you be able to control your own thoughts, feelings, and emotions. It is important that you respond **appropriately** to situations. Your attendant has the right to be treated in a compassionate, dignified manner and be treated with courtesy. It is your responsibility to teach the attendant what your expectations are.

Training an Attendant

The amount and type of training you will need to provide your attendant will depend on **your** needs. Training an attendant based on your unique needs will reduce confusion later.

Checklist for Training

- Begin by explaining your disability in as much detail as you feel is necessary for your attendant to understand what your needs will be.
- Explain technical words you may use. Be as specific as possible.
- Emphasize anything related to safety or emergencies. If there is a procedure other than calling 911, make sure your attendant knows and understands how to utilize it appropriately.
- Give step-by-step instructions for any procedures your attendant will be helping you with – for example, transferring. Emphasize the importance of doing activities in a certain way. Explaining why things need to be handled a certain way helps the attendant be more aware and careful in doing the task.
- Never assume that your attendant knows exactly what you mean. When you explain a procedure, be sure to have your attendant explain it in his/her own words. In that way, you know the instructions are understood.
- Be patient. Give your attendant time to learn the routine. No matter how many individuals your attendant has worked with, working for you will be different.
- Try to put yourself in your attendant's place. Be aware of your attendant's feelings as you train.
- Utilize the services of others to help with the training. Family members or former attendants can be a great help in training your attendant.

Burnout

Remember, the job of a personal care attendant is not easy and can be stressful. Burnout can happen quickly. Burnout is often a response to stress on the job. It can be defined as feelings of helplessness and hopelessness, discouragement, being worn out, bored, unhappy or not challenged. Burnout prevention is the best cure. The following tips may help prevent burnout and keep you from recruiting, hiring and training a new attendant.

- Encourage your attendant to work in some free time away from work. This is especially important since most that choose to work as attendants are naturally nurturing and can readily take on the concerns of others.
- Encourage your attendant to develop interests outside of work. This may be something as simple as developing a reading habit or fine tuning a current interest.
- Try to include variety in your attendant's work. Be as flexible as possible within limits.

Use backup attendants so your primary attendant can have time off. Everyone needs time away from work.

Happiness encourages productivity and makes the job easier for everyone. Good communication between you and your attendant cannot be overemphasized. It will enable both of you to maintain a good working relationship.

Managing and Keeping A Good PCA

“If you love what you do you’ll never do another days work in you life.” Willie Jolly

Good Communication is Essential

Any one who prospers as a PCA must love what they do. Therefore, those who choose to work as attendants often take the job for more than just monetary rewards. Their reward can be personal satisfaction or a chance to work closely with other people. If a PCA isn’t there for money or power but for personal reasons, then the environment of the job you set, will make a difference. The work environment you create is one of the most important factors in keeping your PCA.

You should do what you can to create a work environment that will bring out the best in your attendant. Maintaining a positive attitude and being satisfied with his/her work is essential for the attendant. Good communication between you and your attendant will enable both of you to get along better and be happier with the work arrangement.

How to Create a Good Work Environment

What can you do to create a work environment your PCA will love or at least like? Make your environment *positive* and *productive*. Then you will get what you need... *performance*.

- Set the tone of the job by letting you attendant know exactly what they are to do as your PCA. Be specific with duties, responsibilities, results you want and your expectations. Give examples where possible so your employee can perform accordingly.

- Let them know you fully appreciate work they do. Being fully appreciated for the work they do is what employees have identified as the #1 thing they want from their employers.
- Offer praise for the good job they do- when correct, appropriate performance is observed. Be specific in letting them know they have met your expectations by praising your attendant.
- Remember what gets rewarded gets done.
- Respect your attendant. Trust them, as you would want to be trusted. Be open, honest, kind and patient. Be mannerly.
- To motivate your PCA you must first find out what motivates them. What makes them tick at work? What do they appreciate from you? A simple thank you is the greatest motivation.
- Talk to your attendant. Find out what they think or feel about you and your management style. Be open to make changes if needed. Every relationship we have in life takes work and communication. If changes are needed, discuss suggestions, work with your PCA on a solution.
- Don't let small irritations build up into angry outburst. Anger that is vented after building is often expressed in hurtful and destructive ways. Either forgive and forget or immediately discuss the source of your irritation.
- When it is necessary to point out that you are displeased with something your attendant has done, it is important to remember to be open, honest, and criticize the action, not the individual.
- Respect your attendant. Remember that you would like to be treated in an honest, kind, respectful, and patient manner – just the way you would like to be treated.
- Keep the working relationship private. Just as you would not want your PCA discussing your life with their friends, don't talk about your attendant's life with your friends. Mutual respect is earned.
- Attendants have their own lives, no matter how closely they might be tied to yours. Always respect their privacy and do not disturb them during their off time. This is especially true for live-in attendants. Respect your attendant's private time in the same way you expect yours to be respected.
- Show you care. This is possibly the key to a good working relationship. Show the PCA that you care about them, about their performance and about how they feel about their job.

Remember your PCA comes to work daily for more than a paycheck. They come for interesting work, helping others, a desire to serve, and to be appreciated for their work. Creating a good work environment communicates a positive and productive atmosphere. You will then get the performance you need.

You have the opportunity to provide a positive work environment for your attendant and yourself. Remember, good communication between you and your attendant is the key to a good relationship. When you are both happy, the attendant will stay with you longer and do a better job for you – a mutually beneficial state!

How to Give Feedback

Feedback is letting your attendant know how well and if they are doing the job you expect or want. Feedback may involve the things they do well by praising them. Feedback also involves the things, which they may not do so well- counseling. Feedback is all about praising the good performance and counseling the poor performance.

Giving Praise for Good Performance

- Always be sincere- don't say something you don't really mean.
- Be specific- describe the situation or event that you like and compliment that exact behavior or act, not the overall person.
- Tell what your feeling was when it happened, say you appreciated it, or say "Thank you."

A simple formula to remember is to tell your attendant what **act** or **action** they did and how it made you **feel**

ACTION + (your) FEELING + THANK YOU.

Remember praising someone's good performance is a sure fire way to have it repeated.

Counseling Poor Performance

Certainly your PCA will do things you like, perform as you asked. But sometimes we all fall short. Sometimes we miss the mark. Sometimes we have a bad day. In other words at times you may see poor performance you need to mention to the PCA. This is where counseling comes in. How do you counsel- provide feedback on poor performance?

Make it positive

- Use criticism as a tool for communicating and sharing information with your PCA.
- Remember the whole idea is for them to understand what you need and how they can perform it better the next time.

Make it private

- Avoid the temptation to correct your attendant in front of others.
- Never berate your attendant.

Show you care and are concerned about their performance.

What is a good method for providing counseling?

1. State what you have observed.

Example

Say this... "It is 10 minutes after 8:00. You are 10 minutes late"

Don't say what you think; don't jump to conclusions; don't talk about the person, only the performance.

2. Wait for them to respond.

Let them have a chance to answer your observations. Don't jump in with your thoughts.

3. Remind them of your expectations.

"We have discussed that you are to be here at 8:00"

4. Agree upon a solution.

Ask them what they plan to do to correct the performance. If they truly have no solution, suggest how things might be changed.

5. Follow-up by praising them the next time it is performed correctly.

When you see good performance in the future tell them.

Suggestions for Giving Correction

- Give the feedback as soon as possible after the situation you dislike occurs
- Discuss only one incident at a time. If you counsel immediately it will be one incident at a time. Don't let things build up. (Another reason to take care of problems as they occur!)
- Do not bring up things from the past. Talk about the present performance problems, no matter how great the temptation to do otherwise.
- Focus on the person's performance, not the person.
- Be gentle but direct
- Keep the discussion brief and to the point.
- Don't become angry, intense, emotional or frustrated.
- Don't exaggerate.
- Be aware of your tone of voice. Talk calmly, rationally and in a positive way. Only 30% of the message you send is sent with words – your body language does the rest, and that includes your voice tone and inflection. The way you speak will affect the way your attendant will react. See this as "teaching" opportunity and not an opportunity to "punish" them.

Lastly, if the relationship is not working out and if you have created a good work environment, you have praised the good performance and counseled the poor performance—given feedback, it may be time to terminate the agreement. There are good and not-so-good ways to do this. If termination is necessary:

- State the reason clearly
- Don't personally attack
- Give a notice according to the terms of your agreement
- Never withhold payment. It is illegal to withhold payment of wages, no matter how dissatisfied you are with your attendant's work. The Department of Labor requires employees to be paid for time worked, no matter how unhappy about it you may be. Simply give notice and terminate the agreement.

As you can see providing feedback is important. If you praise the PCA for good work, address poor performance as it occurs, you will most likely get the results you want. The key is communication. You and your attendant will have a satisfying and productive relationship.

Record Keeping

It is important that you keep an accurate record of the time an attendant works for you. Keep in mind that you can set a workweek as you choose. It does not have to begin on Monday and end on Sunday. However, once you set the workweek, you need to keep it. You cannot start the workweek on Wednesday one week and then switch to beginning it on Friday the next week. The Department of Labor requires a set workweek, primarily for the purposes of figuring overtime pay, if needed. Overtime must be paid any time an individual works more than forty hours in a workweek. Paid time off does NOT count as hours worked for the purpose of figuring overtime. Overtime pay is only for hours actually worked.

The following sample time sheet contains the basic information you will need:

Employer: _____ Phone: _____

Attendant: _____ Phone: _____

Week Beginning	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
Date							
Beginning							
Ending							
Total Hours/Day							

Total hours/week _____

Employer's signature _____

Attendant's signature _____

Attendant's Social Security number _____

A time sheet in an Excel spreadsheet template can be found in the Personal Care Attendant CD in Chapter 3. You may click on the button marked “Time Sheet Spreadsheet” and use the template to track your attendant’s hours worked, rate of pay and salary due.

IMPORTANT INFORMATION FOR YOU AS AN EMPLOYER

Fair Labor Standards Act (FLSA) Information

The FLSA sets minimum wage, overtime pay, and record keeping standards for employment subject to its provisions. Unless exempt, covered employees must be paid at least minimum wage and not less than one and one-half times their regular rates of pay for overtime hours worked (hours in excess of 40 hours a week). For further information see Appendix A, B and C.

Terms Used in FLSA

Workweek -- A workweek is a regular period of 168 hours during seven consecutive 24-hour periods. It need not coincide with the calendar week. It may begin on any day of the week and at any hour of the day established by the employer. Generally, for purposes of minimum wage and overtime payment each workweek stands alone; there can be no averaging of 2 or more workweeks. Normally, overtime pay earned in a particular workweek must be paid on the regular payday for the pay period in which the wages were earned.

Hours Worked -- Covered employees must be paid for all hours worked in a workweek. In general, "hours worked" includes all time an employee must be on duty, or on the employer's premises or at any other place of work. Also included is any additional time the employee is allowed (i.e., suffered or permitted) to work.

Workday -- The period between the time on any particular day when such employee begins his/her "principal activity" (job duties) and the time on that day at which he/she stops performing these duties. The workday may therefore be longer than the employee's scheduled shift or hours.

Exemptions from Overtime Pay Only

Employers who provide home health care services for individuals who (because of age or infirmity) are unable to care for themselves may or may not be required to pay minimum wage and/or overtime pay. This depends on the type of services provided and the nature of the working relationship. Certified nurse aides and home health care aides may be considered exempt from the FLSA's wage requirements depending upon the nature of their work.

For specific information on who qualifies for this exemption see Appendix A.

What Records Are Required

Every covered employer must keep certain records for each non-exempt worker. The Act requires no particular form for the records, but does require that the records include certain information about the employee. The Act requires you keep data about the hours worked and the wages earned. The law requires this information to be accurate. The following is a listing of the records that an employer must maintain:

- Employee's full name and social security number.
- Address, including zip code.
- Birth date, if younger than 19.
- Sex and occupation.
- Time and day of week when employee's workweek begins.
- Hours worked each day.
- Total hours worked each workweek.

- Basis on which employee's wages are paid (e.g., "\$6 an hour", "\$220 a week", "piecework")
- Regular hourly pay rate.
- Total daily or weekly straight-time earnings.
- Total overtime earnings for the workweek.
- All additions to or deductions from the employee's wages.
- Total wages paid each pay period.
- Date of payment and the pay period covered by the payment.

Record Keeping

Records required for exempt employees differ from those for nonexempt workers. Special information is required for home workers, for employees working under uncommon pay arrangements, for employees to whom lodging or other facilities are furnished, and for employees receiving remedial education.

Timekeeping

Employers may use any timekeeping method they choose.

They may:

- use a time clock
- have a timekeeper keep track of employee's work hours
- have attendant record their own times

Any timekeeping plan is acceptable as long as it is complete and accurate.

A sample timekeeping format employers may follow but are not required to do so can be found on page 26.

Employees on Fixed Schedules

Many employees work on a regular fixed work schedule. The employer keeps a record showing the exact daily and weekly hours the attendant worked and that the attendant followed the schedule. When an attendant is on a job for a longer

or shorter period of time than the schedule shows, the employer must record the hours the worker actually worked.

How Long Records Should Be Retained

Each employer shall preserve for at least three years payroll records, collective bargaining agreements, sales and purchase records. Records on which wage computations are based should be retained for two years, i.e., time cards and wage rate tables, work and time schedules, and records of additions to or deductions from wages. These records must be open for inspection by the U.S. Department of Labor's Employment Standards Administrative Wage and Hour Division's representatives, who may ask the employer to make extensions, computations, or transcriptions. The records may be kept at the place of employment or in a central records office.

For further information on record keeping requirements under the Fair Labor Standards Act visit [*www.dol.gov/esa/regs/compliance/whd/whdfs21.htm](http://www.dol.gov/esa/regs/compliance/whd/whdfs21.htm).

Tax Consequences

Whether you will have to pay payroll taxes for your PCA will depend on whether that person is classified as an "employee" or an "independent contractor". If your PCA is considered an employee you must pay payroll taxes such as Social Security, state withholding, federal withholding and etc.. Please see Appendix D for further information. For specific questions contact the Internal Revenue Service.

Legal Restrictions on Firing

If you have a formal employment contract with your attendant, you'll frequently write in the contract the proposed length of employment and reasons either you or your attendant can end the relationship. In other words, the contract's terms will generally rule your ability to fire your attendant, as well as the attendant's ability to quit. If either of you attempts to terminate the employment relationship in violation of those terms, a potential breach of contract claim can occur.

Assuming that a formal contract does not govern your employment relationships, as is generally the case, what limitations restrict your ability to fire your employees? In all states like Alabama, those relationships are normally governed by the "employment-at-will" doctrine. "Employment-at-will" means that there's a presumption that the employee is employed at the employer's will for an indefinite period rather than for a fixed term.

Traditionally, both the employer and the employee have had the ability to end an at-will relationship at any time and for any reason with reasonable notice as stated in the contract. The unlimited freedom to fire at-will employees at any time for good cause, bad cause, or no cause at all has been eroded in recent years by the federal and state governments and the courts. The exceptions have become a part of the employment-at-will doctrine form the basis for most breach of contract claims. These are claims where employees sue you for lost wages, punitive damages, and occasionally, reinstatement in their job.

Limitations in Written Laws

Numerous federal and state laws potentially restrict an employer's ability to fire at-will employees. These laws fall into two general categories.

- The first category is laws that make it illegal for employers to discriminate against certain individuals.
- The second category is laws that make it illegal for an employer to retaliate against employees who exercise rights conferred by the laws or who take steps to see that the laws are enforced.

Courts, too, have taken steps to limit an employer's ability to fire at-will employees. In doing so, they generally rely on one of the following theories:

- ***The implied contract limitation:*** a statement or document from the employer created a formal employment contract where none previously existed. For example, stating that employees will be fired only for good cause may form the basis for an "implied" contract. However, if the contract is an employment-at-will agreement, such as in the sample, this should not be a problem.
- ***The public policy limitation:*** that the firing goes against "public policy" by infringing on some right granted employees by federal or state law or because it is otherwise morally or socially wrong. For example, firing an employee merely for filing a workers' compensation claim is illegal. When there are less than five (5) employees, Alabama Law does not require workers' compensation.

- **The bad faith limitation:** employers are generally obligated to deal fairly and in good faith with their employee. You should deal with your personal care attendant fairly in all circumstances.

Preserving the Employee's Dignity

Even when firing a worker, you should make every possible attempt to maintain the employee's dignity.

It's natural for a person being fired to feel resentment towards you. As much as possible, everything you do in a termination meeting should minimize this natural resentment. This is not so much out of concern for the attendant who is being discharged, but for your own self-protection. It's not good for your reputation to have ex-employees bad-mouthing you all over town. Others may develop the impression that you treat your employees unfairly. They might think that you'll do the same to them.

As much as you can, you'll also want to avoid the possibility that a disgruntled ex-employee might sue you. Most lawsuits in this area are filed because of the employee's feelings, not because the facts of the case are particularly strong. If you can soften the blow to the person's ego, or keep from making it worse, your odds of being sued go down dramatically.

Finally, there have been times when fired employees become so distraught that they threaten to harm (or actually do harm) their former boss. Treating workers as compassionately as possible will minimize the chance that this might happen to you.

Setting Up the Termination Meeting

If you need to fire or lay off someone, it should always be done face-to-face. Never fire or lay off by letter or over the phone. Early in the day and early in the week is generally considered the best time to hold a termination interview.

Avoid Fridays and the day before a holiday or vacation. An employee who is let go on a Friday has two days to brood about his or her treatment by the employer and to look for ways to retaliate. Firing a person early in the week gives him or her the opportunity to focus on the future and begin looking for a new job right away.

Also, you won't have to spend the weekend with the bad memory of a distasteful task on your mind.

For similar reasons, the discharge should be conducted early in the day. People are fresher, more rested and better able to deal with adversity and stress earlier in the day. People tend to be tired and short-tempered later in the day, which may increase the chance for an unpleasant reaction to bad news. Also, discharging earlier in the day allows you to get back into the work routine and overcome any unwarranted guilt that may exist for having to fire an employee.

Termination Meeting Checklist

Conduct the meeting in sequence as follows:

1. Tell your attendant the purpose of the meeting. Although the reason for termination should be communicated, there is no need to go through a step-by-step analysis of the documentation supporting the reason for discharge.
2. Advise that the decision is final and cannot be reversed.
3. Emphasize that all relevant factors were reviewed.
4. Tell your attendant the effective date of the termination.
5. Review with your attendant a written summary of benefits, if any
6. Have final paychecks ready. If your attendant is to leave immediately, have any final checks, benefits or vacation payments prepared and inform the employee how to collect his or her personal belongings and leave the premises.
7. End the interview by saying that your attendant will be notified if there are any other matters that must be dealt with. (Just in case something comes up in the future.)
8. Wish your attendant good luck and express confidence in his or her future.

What About Voluntary Resignations?

If your PCA informs you that he or she is leaving, you should set up a time to discuss the matter, and then follow basically the same procedures that you would follow if you were the one who was ending the relationship. It's important to find out your attendant's true reason for leaving, because:

- If there is a legal challenge by any party, you may need the information to prepare a defense.
- In a government investigation, you might have to compare your past record with the action in question, or compare future actions with this one.
- The information may be useful if your attendant later files for unemployment benefits, and you want to contest them.
- If more than one employee leaves, you want to know if there is a pattern. Turnover is costly, and you will have to search for, hire and train a replacement. If possible, you want to get your attendant's reasons for leaving in writing and keep them in your permanent records.

Appendix A:**Fact Sheet #25-Home Health Care
Industry Under FLSA****U.S. Department of Labor, Employment Standards
Administration Wage and Hour Division**

This fact sheet provides general information concerning the application of the FLSA to the home health care industry.

CHARACTERISTICS

Employers who provide home health care services for individuals who (because of age or infirmity) are unable to care for themselves may or may not be required to pay minimum wage and/or overtime premium pay depending upon the type of services provided and the nature of the working relationship. Employees providing "companionship services" as defined by the FLSA need not be paid the minimum wage or overtime. Trained personnel such as nurses, whether registered or practical, are not exempt from minimum wage or overtime under the exemption for companions, but registered nurses may be exempt as professionals. Certified nurse aides and home health care aides may be considered exempt from the FLSA's wage requirements depending upon the nature of their work.

REQUIREMENTS

Persons employed in domestic service in households are covered by the FLSA. Nurses, certified nurse aides, home health care aides, and other individuals providing home health care services fall within the term "domestic service employment."

An employee who performs companionship services in or about the private home of the person by whom he/she is employed is exempt from the FLSA's minimum wage and overtime requirements if all criteria of the exemption are met. "Companionship services" means services for the care, fellowship, and protection of persons who because of advanced age or physical or mental infirmity cannot care for themselves. Such services include household work for

aged or infirm persons including meal preparation, bed making, clothes washing and other similar personal services. General household work is also included, as long as it does not exceed 20 percent of the total weekly hours worked by the companion. Where this 20 percent limitation is exceeded, the employee must be paid for all hours in compliance with the minimum wage and overtime requirements of the FLSA.

The term "companionship services" does not include services performed by trained personnel such as registered or practical nurses. Registered nurses are exempt from the FLSA's wage requirements where their time is spent in the performance of the duties of a nurse and are paid on a salary or a "fee basis" as defined by Regulations, 29 CFR Part 541.

Individuals other than trained personnel (such as nurses) who attend to invalid infants and young children are considered companions, rather than babysitters, and their status may thus be within the companion exemption.

Covered domestic service employees who reside in the household where they are employed are entitled to the minimum wage but may be exempt from the Act's overtime requirements.

TYPICAL PROBLEMS

An employee hired as a companion to an aged individual with a physical infirmity spends more than 20% of his/her time doing general household work. That person must be paid at least the minimum wage and one and one-half the regular rate of pay for hours in excess of forty in a workweek

An employee, who provides care and protection for minor children, where the children are not physically or mentally infirm, must be paid the minimum wage and proper overtime compensation. This activity would not constitute exempt companionship services.

*www.dol.gov/esa/regs/compliance/whd/whdfs25.htm

Appendix B:**FLSA Fact Sheet #23: Overtime Pay
Requirements of the FLSA****U.S. Department of Labor, Employment Standards
Administration Wage and Hour Division**

This fact sheet provides general information concerning the application of the overtime pay provisions of the FLSA.

CHARACTERISTICS

An employer who requires or permits an employee to work overtime is generally required to pay the employee premium pay for such overtime work.

REQUIREMENTS

Unless specifically exempted, employees covered by the Act must receive overtime pay for hours worked in excess of 40 in a workweek at a rate not less than time and one-half their regular rates of pay. There is no limit in the Act on the number of hours employees aged 16 and older may work in any workweek. The Act does not require overtime pay for work on Saturdays, Sundays, holidays, or regular days of rest, as such.

The Act applies on a workweek basis. An employee's workweek is a fixed and regularly recurring period of 168 hours -- seven consecutive 24-hour periods. It need not coincide with the calendar week, but may begin on any day and at any hour of the day. Different workweeks may be established for different employees or groups of employees. Averaging of hours over two or more weeks is not permitted. Normally, overtime pay earned in a particular workweek must be paid on the regular payday for the pay period in which the wages were earned.

The regular rate of pay cannot be less than the minimum wage. The regular rate includes all remuneration for employment except certain payments excluded by the Act itself. Payments, which are not part of the regular rate include pay for expenses incurred on the employer's behalf, premium payments for overtime work or the true premiums paid for work on Saturdays, Sundays, and holidays, discretionary bonuses, gifts and payments in the nature of gifts on special

occasions, and payments for occasional periods when no work is performed due to vacation, holidays, or illness.

Earnings may be determined on a piece-rate, salary, commission, or some other basis, but in all such cases the overtime pay due must be computed on the basis of the average hourly rate derived from such earnings. This is calculated by dividing the total pay for employment (except for the noted statutory exclusions) in any workweek by the total number of hours actually worked.

Where an employee in a single workweek works at two or more different types of work for which different straight-time rates have been established, the regular rate for that week is the weighted average of such rates. That is, the earnings from all such rates are added together and this total is then divided by the total number of hours worked at all jobs.

Where non-cash payments are made to employees in the form of goods or facilities, the reasonable cost to the employer or fair value of such goods or facilities must be included in the regular rate.

TYPICAL PROBLEMS

Fixed Sum for Varying Amounts of Overtime: A lump sum paid for work performed during overtime hours without regard to the number of overtime hours worked does not qualify as an overtime premium even though the amount of money paid is equal to or greater than the sum owed on a per-hour basis. For example, no part of a flat sum of \$90 to employees who work overtime on Sunday will qualify as an overtime premium, even though the employees' straight-time rate is \$6.00 an hour and the employees always work less than 10 hours on Sunday. Similarly, where an agreement provides for 6 hours pay at \$9.00 an hour regardless of the time actually spent for work on a job performed during overtime hours, the entire \$54.00 must be included in determining the employees' regular rate.

Salary for Workweek Exceeding 40 Hours: A fixed salary for a regular workweek longer than 40 hours does not discharge FLSA statutory obligations. For example, an employee may be hired to work a 45-hour workweek for a weekly salary of \$300. In this instance the regular rate is obtained by dividing the \$300 straight-time salary by 45 hours, resulting in a regular rate of \$6.67. The employee is then due additional overtime computed by multiplying the 5 overtime hours by one-half the regular rate of pay ($\$3.335 \times 5 = \16.68).

Overtime Pay May Not Be Waived: The overtime requirement may not be waived by agreement between the employer and employees. An agreement that only 8 hours a day or only 40 hours a week will be counted as working time also fails the test of FLSA compliance. An announcement by the employer that no overtime work will be permitted, or that overtime work will not be paid for unless

authorized in advance, also will not impair the employee's right to compensation for compensable overtime hours that are worked.

WHERE TO OBTAIN ADDITIONAL INFORMATION

This publication is for general information and is not to be considered in the same light as official statements of position contained in the regulations. Copies of Wage and Hour publications may be obtained by contacting the nearest office of the Wage and Hour Division listed in most telephone directories under U. S. Government, Department of Labor or by calling our toll free number 1-866-4USWAGE.

*www.dol.gov/esa/regs/compliance/whd/whdfs23.htm

Appendix C:

FLSA Fact Sheet #22: Hours Worked Under the Fair Labor Standards Act (FLSA)

U.S. Department of Labor, Employment Standards Administration Wage and Hour Division

This fact sheet provides general information concerning what constitutes compensable time under the FLSA. The Act requires that employees must receive at least the minimum wage and may not be employed for more than 40 hours in a week without receiving at least one and one-half times their regular rates of pay for the overtime hours. The amount employees should receive cannot be determined without knowing the number of hours worked.

DEFINITION OF "EMPLOY"

By statutory definition the term "employ" includes "to suffer or permit to work." The workweek ordinarily includes all time during which an employee is necessarily required to be on the employer's premises, on duty or at a prescribed work place. "Workday", in general, means the period between the time on any particular day when such employee commences his/her "principal activity" and the time on that day at which he/she ceases such principal activity or activities. The workday may therefore be longer than the employee's scheduled shift, hours, tour of duty, or production line time.

APPLICATION OF PRINCIPLES

Employees "Suffered or Permitted" to work: Work not requested but suffered or permitted to be performed is work time that must be paid for by the employer. For example, an employee may voluntarily continue to work at the end of the shift to finish an assigned task or to correct errors. The reason is immaterial. The hours are work time and are compensable.

Waiting Time: Whether waiting time is time worked under the Act depends upon the particular circumstances. Generally, the facts may show that the employee was engaged to wait (which is work time) or the facts may show that the employee was

waiting to be engaged (which is not work time). For example, a secretary who reads a book while waiting for dictation or a fireman who plays checkers while waiting for an alarm is working during such periods of inactivity. These employees have been "engaged to wait."

On-Call Time: An employee who is required to remain on call on the employer's premises is working while "on call." An employee who is required to remain on call at home, or who is allowed to leave a message where he/she can be reached, is not working (in most cases) while on call. Additional constraints on the employee's freedom could require this time to be compensated.

Rest and Meal Periods: Rest periods of short duration, usually 20 minutes or less, are common in industry (and promote the efficiency of the employee) and are customarily paid for as working time. These short periods must be counted as hours worked. Unauthorized extensions of authorized work breaks need not be counted as hours worked when the employer has expressly and unambiguously communicated to the employee that the authorized break may only last for a specific length of time, that any extension of the break is contrary to the employer's rules, and any extension of the break will be punished. Bona fide meal periods (typically 30 minutes or more) generally need not be compensated as work time. The employee must be completely relieved from duty for the purpose of eating regular meals. The employee is not relieved if he/she is required to perform any duties, whether active or inactive, while eating.

Sleeping Time and Certain Other Activities: An employee who is required to be on duty for less than 24 hours is working even though he/she is permitted to sleep or engage in other personal activities when not busy. An employee required to be on duty for 24 hours or more may agree with the employer to exclude from hours worked bona fide regularly scheduled sleeping periods of not more than 8 hours, provided adequate sleeping facilities are furnished by the employer and the employee can usually enjoy an uninterrupted night's sleep. No reduction is permitted unless at least 5 hours of sleep is taken.

Lectures, Meetings and Training Programs: Attendance at lectures, meetings, training programs and similar activities need not be counted as working time only if four criteria are met, namely: it is outside normal hours, it is voluntary, not job related, and no other work is concurrently performed.

Travel Time: The principles, which apply in determining whether time spent in travel is compensable time depends upon the kind of travel involved.

Home To Work Travel: An employee who travels from home before the regular workday and returns to his/her home at the end of the workday is engaged in ordinary home to work travel, which is not work time.

Home to Work on a Special One-Day Assignment in Another City: An employee who regularly works at a fixed location in one city is given a special one-day assignment in another city and returns home the same day. The time spent in traveling to and returning from the other city is work time, except that the employer may deduct/not count that time the employee would normally spend commuting to the regular work site.

Travel That is All in the Day's Work: Time spent by an employee in travel as part of his/her principal activity, such as travel from job site to job site during the workday, is work time and must be counted as hours worked.

Travel Away from Home Community: Travel that keeps an employee away from home overnight is travel away from home. Travel away from home is clearly work time when it cuts across the employee's workday. The time is not only hours worked on regular working days during normal working hours but also during corresponding hours on nonworking days. As an enforcement policy the Division will not consider as work time that time spent in travel away from home outside of regular working hours as a passenger on an airplane, train, boat, bus, or automobile.

*www.dol.gov/esa/regs/compliance/whd/whdfs22.htm

Appendix D:

Independent Contractor-Internal Revenue Service Guidelines

The Internal Revenue Service lists the 20 factors below as guidelines for employers to use in determining whether the person in question is an employee or an independent contractor. Must meet a majority of these factors.

1. **Instructions**- An **employee** must comply with instructions about when, where, and how to work. Even if no instructions are given, the control factor is present if the employer has the right to give instructions.
2. **Training**- An **employee** is trained to perform services in a particular manner. **Independent Contractors** ordinarily use their own methods and receive no training from the purchasers of their services.
3. **Integration**- An **employee's** services are integrated into the business operations because the services are important to the success or continuation of the business. This shows that the employer is subject to direction and control.
4. **Services Rendered Personally**- An **employee** renders services personally. This shows that the employee is interested in methods as well as results.
5. **Hiring Assistants**- An **employee** works for an employer who hires, supervises, and pays assistants. **Independent contractors** hire, supervise, and pay assistants under a contract that requires him or her to provide material and labor and to be responsible on for the result.
6. **Continuing Relationship**- An employee has a continuing relationship with an employer. A continuing relationship may exist where work is performed frequently recurring although at irregular intervals.
7. **Set Hours of Work**- An **employee** has set hours of work established by an employer. An **Independent Contractor** is the master of his or her own time.
8. **Full Time Work**- An **employee** works full time established by an employer. An **Independent Contractor** can work when and for whom he or she chooses.

9. **Work Done On Premises**- An **employee** works on the premises of an employer, or works on a route or at a location designated by an employer.
10. **Order Or Sequence Set**- An **employee** must perform services in the order or sequence set by an employer. This shows that the **employee** is subject to direction and control.
11. **Reports**- An **employee** submits reports to an employer. This shows that the **employee** must account to the employer for his or her actions.
12. **Payments**- An **employee** is paid by the hour, week or month. An **Independent Contractor** is paid by the job or on a straight commission.
13. **Expenses**- An **employee's** business and travel expenses are paid by the employer. This shows that the **employee** is subject to regulations and control.
14. **Tools and Materials**- An **employee** is furnished significant tools and materials by an employer.
15. **Investment**- An **Independent Contractor** has a significant investment in the facilities he or she uses in performing services for someone else.
16. **Profit Or Loss**- An **Independent Contractor** can make a profit or suffer a loss.
17. **Works for More Than One Person or Firm**- An **Independent Contractor** gives his or her services to two or more unrelated persons or firms at the same time.
18. **Offers Services To General Public**- An **Independent Contractor** makes his or her services available to the general public.
19. **Right to Fire**- An **employee** can be fired by an employer. An **Independent Contractor** cannot be fired as long as he or she produces a result that meets the specifications of the contract.
20. **Right to Quit**- An **employee** can quit his or her job at any time without incurring liability. An **Independent Contractor** usually agrees to complete a specific job and is responsible for its satisfactory completion, or is legally liable to make good for failure to complete it.

***Reference Publication 937 "Business Reporting Internal Revenue Service"**

Appendix E:

Recommended PCA Minimum Standards

Level I-

Consumer directed instruction with access to the Personal Care Attendant Handbook.

Measurable Outcome- receipt of the PCA Handbook and consumer instruction.

Outcome Measure- signature of PCA on file showing receipt of handbook.

Level II-

Consumer directed instruction with access to the PCA Handbook and additional training by attending at least one or more consumer approved training sessions, i.e., CPR training, autism workshop, disability specific training.

Measurable Outcome- receipt of PCA Handbook, consumer instruction and attendance of one or more consumer approved training sessions.

Outcome Measure- signature of PCA on file showing receipt of PCA Handbook. A sign-in form from one or more consumer approved training sessions.

Level III-

Consumer directed instruction, with access to the PCA Handbook, in addition certification as a Certified Nursing Aide/Home Health Aide (C.N.A.) (H.H.A.) equivalent or above.

Measurable Outcome- receipt of PCA Handbook, consumer instruction, and graduation from a certified C.N.A./H.H.A. program; certification as a C.N.A./H.H.A.

Outcome Measure- signature of PCA on file showing receipt of the PCA handbook and valid documentation of certification.

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