Legal Research Brief | May 2026

California Homecare Worker Exclusions from Taxes and Benefits: The Legal Framework

Noah Zatz, Professor of Law & Labor Studies, UCLA

Abstract

This legal research brief details the current legal framework governing the actual or potential exclusion of California homecare workers from taxes or public benefits. This research informs how the Retirement Paradox team is approaching worker surveys and interviews, and it also was identified by our community partners as of immediate practical significance to worker members navigating these complex systems. Exclusion from taxes or benefits may be driven either by whether the worker lives with the client or by whether the two have a close family relationship. The specifics vary with legal context and interact both with California laws specific to the In-Home Supportive Services (IHSS) program and with whether an agency, not only the client, acts as the worker's employer.

The Retirement Paradox for California's Aging Workforce in the Homecare Industry

The Retirement Paradox for California's Aging Workforce in the Homecare Industry investigates a core contradiction: those who support others in aging with dignity face systematic barriers to retirement security in their own lives. This multi-year project led by an interdisciplinary project team from UCLA and key community partners examines how workers are navigating pervasive retirement insecurity, including what resources they rely on, what gaps remain, and what policy solutions they propose. Using surveys, interviews, and focus groups, the project offers a lens into the crises of care and social reproduction that is undermining the lives and futures of aging workers in an aging society and demonstrating the urgent need for structural reform.

UCLA Labor Center

UCLA College | Social Sciences
Institute for Research on Labor & Employment

Executive Summary

The law governing homecare worker exclusions from taxes and public benefits is complex, confusing, and sometimes internally inconsistent. Special attention is paid here to In-Home Supportive Services (IHSS) workers who are relatives of the client. In some cases, IHSS-specific legal authorities do not simply track more general principles and thus may not apply to private-pay workers doing otherwise identical jobs. Depending on the specific tax or benefit at issue, there are two distinct potential bases for exclusion, though in practice these often overlap:

1) Co-residence ("live-in") of the worker and client (regardless of any family relationship), and/or
2) Specific close family relationships (regardless of co-residence) between worker and client, especially parent-adult child, spouse-spouse, and minor child-parent.

Furthermore, the significance of these factors may depend on

a) Whether IHSS provides the funding source, and/or
b) Whether the worker is classified as an employee of the client and/or of an agency.

This brief addresses California homecare worker exclusions in the following contexts:

- Federal and state income tax liability and withholding;
- Federal and state Earned Income Tax Credit (EITC) eligibility;
- Federal FICA (Social Security & Medicare) payroll taxes and associated benefits eligibility;
- Federal self-employment (Social Security & Medicare) taxes and associated benefits eligibility;
- California unemployment insurance eligibility;
- California workers' compensation eligibility; and
- Federal income "deeming" for Supplemental Security Income (SSI) purposes.

The next page contains a table summarizing the relevance of each of these factors to each tax or benefits context. A detailed legal analysis of each topic follows.

Basis for Exclusion	Income Tax (Liability & Withholding)	Earned Income Tax Credit(s)†	FICA (Social Security & Medicare)	Self-emp't tax (Social Security & Medicare)	CA Unemp't Insurance	CA Workers Comp‡	SSI Deemed Income
IHSS funding	✓				✓		✓
Co-residence	✓						✓
Family relationship			✓		✓		✓
Employer identity			✓	✓	✓		
Trade or business				✓			

✔ Indicates factors that contribute to an exclusion, if any.
† Although the factors that produce an income tax liability exclusion could plausibly also apply to the EITC, they ultimately do not.
‡ Although the factors that produce a UI exclusion could plausibly also apply to workers' comp, they ultimately do not.

Income Tax Liability & Withholding

Summary: Live-in status & IHSS funding result in exclusion.

When an IHSS worker lives with the client, IHSS wages are excluded from taxable (gross) income for income tax purposes. The source of this rule is an administrative policy adopted by the IRS during the Obama Administration and promulgated as IRS Notice 2014-7, Foster Care Payment, Medicaid Waivers, 2014-4 I.R.B. 445 (2014). In Notice 2014-7, the IRS adopted a policy of classifying some homecare wages as "difficulty of care" payments excluded from gross income pursuant to Internal Revenue Code (IRC) § 131(c), one of several related provisions that exclude foster care payments from taxation.

Under Notice 2014-7, the "difficulty of care" classification is triggered by (a) payment through a state Medicaid Home & Community-Based Services (HCBS) waiver program under Section 1915(c) of the Social Security Act and (b) co-residence of the worker and client. Notice 2014-7 specifically rejects any distinctions based on the existence of a family relationship, though a prior body of law had used such distinctions to deny § 131(c) tax benefits to some relative providers. A 2016 IRS private letter ruling explicitly extended the Notice 2014-7 analysis to California's suite of IHSS programs operating under similar, but distinct, legal authority. *See* I.R.S. Priv. Ltr. Rul. 127776-15 (Mar. 1, 2016). These included Medicaid programs operated under Social Security Act sections 1905(a)(24) [Personal Care Services Program (PCSP)], 1915(j) [IHSS Plus Option (IPO)] & 1915(k) [Community First Choice Options (CFCO)], as well as California's solely state-funded residual IHSS program for clients not eligible for federal Medicaid [IHSS Residual Program (IHSS-R)]. Because the analogy to foster care under IRC § 131(c) relies on government funding and supervision of the care provided, Notice 2014-7 is limited to programs like IHSS and has no application to private pay settings.

The 2016 private letter ruling also clarified that when IHSS wages are excluded from gross income, they likewise are not subject to income tax withholding or reporting by the employer. This implication, and a number of related ones, is detailed in an IRS FAQ document that elaborates on Notice 2014-7. U.S. Internal Revenue Service, Certain Medicaid Waiver Payments May Be Excludable from Income (rev'd Apr. 28, 2025), https://www.irs.gov/individuals/certain-medicaid-waiver-payments-may-be-excludable-from-income.

Thus far, the IRS has continued to adhere to the approach established by Notice 2014-7 across several successive presidential administrations. Most recently, a June 2025 private letter ruling affirmed the applicability of the Notice 2014-7 approach to another (anonymized) state's IHSS Medicaid program under § 1905(a)(24). I.R.S. Priv. Ltr. Rul. 122230-24 (June 4, 2025).

As discussed below in the context of the EITC, one court has expressed grave skepticism about Notice 2014-7's interpretation of IRC § 131(c), but it did so in a setting that did not directly

affect tax liability or withholding. Because Notice 2014-7 generally benefits taxpayers (or at least does not harm them), there is little risk of a taxpayer lawsuit challenging it. However, the IRS could change its interpretation on its own, or Congress could intervene with a statutory amendment.

Because the exclusion of IHSS wages turns on whether the worker and client live together, the entity responsible for issuing paychecks and reporting to the IRS needs to know about the worker's live-in status. The IRS FAQ (Q#15) allows the paying agency to rely upon a worker's self-certification of live-in status. For California IHSS purposes, this is done using the state's Live-In Self-Certification Form (SOC 2298). Because California's income tax utilizes federal adjusted gross income as its starting point and has no California-specific provision separately providing for income taxation of IHSS wages, IHSS wages excluded from federal income tax under Notice 2014-7 are also excluded from California income taxes. *See* California Franchise Tax Board, In-Home Supportive Services: Personal Income Types (rev'd Sep. 24, 2025), https://www.ftb.ca.gov/file/personal/income-types/in-home-support-services.html.

Earned Income Tax Credit

Summary: Live-in status and IHSS funding plausibly relevant, but ultimately no exclusion.

Even when IHSS wages are excluded from gross income under Notice 2014-7, they nonetheless count as "earned income" for the purpose of claiming the Earned Income Tax Credit (EITC). This counterintuitive result is the outcome of significant and ongoing legal developments since Notice 2014-7 was issued. Mechanically, this outcome is now facilitated by the IRS' introduction of a new option on W-2 forms specifically for IHSS-type wages subject to Notice 2014-7.

The EITC is an important "work support" that provides additional income to low-income households with some earnings from paid work, especially those with minor children. The EITC is deeply intertwined with the income tax. It is claimed through filing income tax returns and is structured as a tax credit that reduces income tax liability. The distinctive feature of the EITC, however, along with the closely related Additional Child Tax Credit (ACTC), is that it is "refundable." This means that when the size of the credit is larger than the income tax liability toward which the credit is applied, the credit not only eliminates any taxes owed to the government but also results in a net payment from the government to the tax filer. This payment uses the mechanics for an income tax refund, but in this case, it goes beyond merely returning taxes previously paid (via withholding or the like).

Given this integration, one might expect that wages excluded from taxable income under Notice 2014-7 would also be excluded from "earned income" for EITC and ACTC purposes. Indeed, the IRC defines "earned income" as a subset of gross income, and ordinarily, wages reported as W-2

income are used for both gross income and earned income purposes on a tax return. *See* IRC, 26 U.S.C. § 32(c)(2)(A)(i).

Ordinarily, the overlap between earned income and gross income produces the EITC's distinctive trapezoidal shape. Someone with no earnings gets zero EITC. As earned income increases above zero, the size of the EITC rises (or "phases in") until it reaches its maximum value. At that point, the size of the EITC "plateaus" while gross income continues to rise (with additional earned income also increasing gross income). When gross income (which also includes taxable sources of income other than earnings) becomes large enough, the plateau ends, and the size of the EITC gradually decreases (or "phases out") as gross income rises further; eventually, the credit reaches zero again. *See* IRC, 26 U.S.C. § 32(a). *See generally* Urban Institute & Brookings Institution Tax Policy Center, [What Is the Earned Income Tax Credit?](https://taxpolicycenter.org/briefing-book/what-earned-income-tax-credit), *Tax Policy Briefing Book* (rev'd Jan. 2026), https://taxpolicycenter.org/briefing-book/what-earned-income-tax-credit.

This typical relationship between taxable income and earned income for EITC purposes does <u>not</u> apply to IHSS wages subject to Notice 2014-7. The explanation lies in the case *Feigh v. Commissioner of Internal Revenue*, 152 T.C. 267 (2019), and the IRS' subsequent reaction to it. *Feigh* involved a worker who cared for (and lived with) their adult disabled child and was paid through a state HCBS waiver program structured similarly to IHSS. On their tax return, the worker included their homecare wages as "earned income" to claim the EITC but also excluded those wages from "gross income," which prevented an income-based reduction in the EITC. The IRS initially rejected the EITC claim on the ground that the statute limits "earned income" to income that also contributes to gross income, and that under Notice 2014-7, the IHSS-type wages did not count toward gross income. Therefore, since the wages were not gross income, they could not be earned income. A contrary result, the IRS reasoned, would give the worker a "double benefit": excluding wages for tax liability purposes while including them for EITC refund purposes.

The Tax Court ruled in favor of the worker and against the IRS. The court's rationale was, in essence, that Notice 2014-7's treatment of IHSS-type wages as § 131(c) "difficulty of care" payments stretched § 131(c) too far. The court cited potential distinctions between conventional understandings of foster care versus a relative's care for their family member in that family member's own home, and it noted that both the IRS and courts had relied on such distinctions prior to the agency's change of position in Notice 2014-7. Technically, however, the court's ruling applied only to the use of § 131(c) to exclude IHSS-type wages from "earned income." Whatever discretion the IRS might have had to exclude such wages from gross income for liability purposes, its hands were tied when access to the EITC was at stake: the "IRS cannot remove a statutory benefit provided by Congress." *Feigh*, 152 T.C. at 275.

The *Feigh* court's distinction between classifying IHSS-type wages for tax liability versus credit eligibility purposes opened up the theoretical possibility that the same wages could be treated differently for different purposes on the same tax return, notwithstanding the ways in which they ordinarily are integrated. The IRS seized on this possibility in its response to the ruling during the last year of the first Trump Administration. The agency announced that it would acquiesce in the narrow result of *Feigh*—counting live-in IHSS-type wages as "earned income" for EITC purposes—without accepting *Feigh's* reasoning critical of Notice 2014-7 and without modifying the IRS' policy of excluding live-in IHSS-type wages from gross income for tax liability purposes. *See Feigh v. Comm'r*, 152 T.C. 267 (2019), *action on dec.*, I.R.B. 2020-14 (Mar. 30, 2020). In other words, the IRS consciously declined to resolve its initial "double benefit" objection by simply rescinding its treatment of live-in IHSS-type wages as "difficulty of care" for all purposes. Instead, the Notice 2014-7 approach continues for liability and withholding, but it does not extend to "earned income" for EITC and ACTC purposes.

A California follow-up case addressed analogous issues for the California Earned Income Credit (CalEIC). *In the Matter of the Appeal of F. Akhtar and M. Akhtar*, 2021 WL 1895570 (Cal. Office of Tax Appeals) presented a variation on *Feigh*, again involving a worker who was the parent of the client, an adult child with disabilities. This time, the tax filer did include their IHSS wages in the gross income they reported (presumably because it was low enough to make no difference), and they also included those wages as earned income. The Notice 2014-7 issue was nonetheless apparent because the paying agency had neither reported the wages nor withheld income taxes. The California Franchise Tax Board (CFTB) took essentially the same position as the IRS had in *Feigh*, arguing that, under the applicable state statute, earned income for CalEIC purposes must also be part of gross income and subject to withholding; a tax filer cannot get around that simply by incorrectly reporting IHSS wages as gross income, contrary to Notice 2014-7. Rejecting the CFTB's argument, the Office of Tax Appeals essentially extended *Feigh* to California law, likewise holding that live-in IHSS wages constitute earned income, regardless of their status as gross income.

The unusual dual status of live-in IHSS-type wages creates a practical paperwork problem. The worker needs documentation of IHSS-type wages for EITC purposes, even though they are excluded from the usual reporting of wages for gross income purposes. In 2024, the IRS introduced a new W-2 form specifically to address this issue. Pursuant to Notice 2014-7, live-in IHSS-type wages continue not to be reportable in the usual Box 1 for "wages, tips, other compensation," but now they are to be reported in Box 12 using code "II" to denote payments excluded from gross income under Notice 2014-7. *See* Rev. Proc. 2024-27, 2024-31 I.R.B. 300.

FICA Payroll Taxes (Social Security & Medicare contributions)

Summary: Family relationships and IHSS employment structure result in exclusions.

Like income tax withholding, workers are accustomed to deductions from their paychecks, and reporting on their W-2s, for FICA: the Federal Insurance Contributions Act. However, IHSS wages are not subject to special treatment for FICA payroll tax purposes based on the "difficulty of care" issue applicable to federal income tax liability. Notice 2014-7 is irrelevant here. Nonetheless, some IHSS providers may have their wages excluded from FICA on the legally distinct basis of domestic worker exclusions**.** Note that the wages subject to FICA are the same as the wages that establish Social Security eligibility and benefit amount, so wages excluded from FICA taxation are also excluded from consideration in establishing Social Security benefits.

Unlike the EITC's "earned income," FICA payroll taxes are not definitionally intertwined with gross income subject to income tax. Instead, taxes are applicable to "wages" from "employment," subject to various FICA-specific exclusions. IRC, 26. U.S.C. § 3101. Moreover, these definitions of wages and employment lack any analogue to the § 131 foster care exclusions from gross income for income tax purposes, let alone the § 131(c) "difficulty of care" exclusion specifically. Accordingly, the Notice 2014-7 analysis of IHSS-type homecare wages is inapplicable to FICA. Although this conclusion has not been directly addressed by any binding legal authority, it appears to be uncontroversial. For instance, the IRS FAQs (Q#s 18-19) on Notice 2014-7 explicitly state that IHSS-type wages subject to exclusion from income tax withholding and reporting nonetheless are subject to FICA, unless some other basis for exclusion applies.

For IHSS and other homecare workers, however, there is indeed a separate potential basis for exclusion from FICA: FICA's "domestic service" exceptions. The applicability of these exceptions depends in part on who is identified as the worker's employer(s).

Two potentially relevant FICA exclusions apply to "domestic service in a private home of the employer." IRC, 26 U.S.C. §§ 3121(a)(7)(B) & (b)(3)(B). Homecare generally counts as such "domestic service," so the question is whether the other, more specific, triggers for exclusion also apply. First, no FICA is due if the worker's total wages for the calendar year are below an annually updated threshold: $3,000 in 2026. Second, no FICA is due if the worker is paid to care for their spouse, for their adult child, or, if the worker is under 21, for their parent.[1] Note that this relationship-based exclusion does not apply to workers age 21 or above caring for a parent.

[1] This characterization starts from the perspective of the worker, consistent with the primary focus of this brief. Technically, however, the statute approaches the question from the perspective of the employer/client, as becomes relevant in footnote 3 below.

These exclusions apply only to domestic work "in the home of the employer." Note that this refers to where the work occurs, not where the worker lives (unlike Notice 2014-7). Moreover, the trigger is not merely domestic work in a private home, but only in the employer's private home. In practice, this means that the FICA domestic work exclusions apply only when the client is the worker's sole employer.[2] If, instead, the worker is employed by a third party (a public or private agency) to provide services to a client in the client's home, these FICA exclusions do not apply because the work is not in the employer's (the agency's) home. For this reason, the IRS homecare FAQs (Q#18) make clear that when a public agency pays IHSS-type workers as its own employees, it owes FICA payroll taxes on these wages; neither Notice 2014-7 nor the FICA domestic worker exclusions apply. Similarly, any private-pay agency that solely or jointly employs (for tax purposes) a homecare worker is liable for FICA, without regard to the domestic worker exclusions.[3]

California's laws establishing the IHSS program, however, introduce a further wrinkle. Although the state issues paychecks to IHSS workers and pays applicable taxes to the IRS, these payments are characterized legally as being made on behalf of the client, who remains the employer for tax purposes. This general point was forcefully reaffirmed by the California Supreme Court in *Skidgel v. California Unemployment Insurance Appeals Board*, 493 P.3d 196 (Cal. 2021), an unemployment insurance case to which we will return below. Because the client is the sole employer for these purposes—notwithstanding that the state or other public agency issues the paychecks—the result is that IHSS workers are excluded from FICA when either the annual wages or the family relationship tests described above apply. The IRS homecare FAQs (Q#19) affirm this approach. A similar analysis would apply in a private-pay situation where an agency issuing paychecks could establish that it was not a joint employer of the worker but instead merely serves a payroll processing function.

[2] Another scenario involves a grandparent employed by their adult child to care for their co-resident grandchild (the employer's child). The domestic work exclusion generally would apply here because the employer is the worker's child even though the care recipient is the worker's grandchild. However, there is a further exception (eliminating the FICA exclusion) if the employing child is or was married but has no spouse capable of providing care (due to death, divorce, or disability), and their child (the grandchild) is either under 18 or requires care due to disability. IRC, 26 U.S.C. § 3121(b)(3)(B)(i)-(iii). This typically would not implicate IHSS because (a) absent disability, there would be no basis for IHSS services for a minor child, and (b) an adult grandchild with a disability and receiving IHSS would normally be considered the employer, not their co-resident parent (the worker's child). However, in the case of a minor grandchild with a disability receiving IHSS services, their grandparent IHSS provider might be considered employed by their parent. A related variation might arise in the case of a parent IHSS provider for their disabled minor child, in which case it would be difficult to identify an employer.

[3] Because the FICA exclusion refers to "the home of the employer" in this way, it is distinguishable from some broadly similar—and hotly contested—issues concerning the applicability to third-party agency employers of domestic work exclusions under the federal Fair Labor Standards Act (FLSA) that establishes minimum wage and overtime rules. *See* Corie Anderson, DOL Proposes Rule To Return Home Healthcare Agency Workers to FLSA Exempt Status, *JD Supra*, Aug. 15, 2025.

Self-Employment Tax (Social Security & Medicare Contributions

Summary: Absence of a homecare "trade or business" may result in exclusion.

Workers who have no employer—and thus no one subject to FICA—but instead are considered self-employed or independent contractors generally pay a "self-employment tax" (under the Self-Employment Contributions Act (SECA)) on earnings, a tax collected in conjunction with income taxes. Again, income subject to self-employment tax is unaffected by the Notice 2014-7 income tax exclusion but may be affected by a different exclusion as the IRS homecare FAQ (Qs#12-13) explains. In this case, the issue most relevant to homecare is the limitation of self-employment tax to earnings from the worker's "trade or business." IRC, 26 U.S.C. § 1402(a). For a homecare worker who cares for a single client because of a family relationship, and not as part of a more general homecare occupation involving other current or past clients, the work may be considered outside of a trade or business and thus not subject to SECA. The ultimate question, though, is the connection to a "trade or business," not the presence, absence, or type of family relationship. *See* IRS, Family Caregivers and Self-Employment Tax (Aug. 2025), https://www.irs.gov/businesses/small-businesses-self-employed/family-caregivers-and-self-employment-tax. This analysis is presented in condensed form for completeness, but it has limited relevance in California, where homecare workers are unlikely to be considered independent contractors.[4]

California Unemployment Insurance

Summary: Family relationships and IHSS employment structure result in exclusion.

Eligibility for unemployment insurance (UI)—and subjection to unemployment insurance payroll taxes—largely tracks the Social Security/FICA analysis presented above. The Notice 2014-7 income tax exclusion for live-in IHSS homecare workers is again irrelevant. However, IHSS workers may be excluded from UI based on a family relationship to the client/employer, in conjunction with IHSS rules treating the client as the sole employer and treating the state as merely making tax payments on behalf of the client-employer.

California unemployment insurance law contains family relationship exclusions similar to those found in the FICA domestic worker exclusions discussed above. The statutory definition of employee excludes a worker if they are the parent, spouse, or minor child (here, under age 18) of their employer. *See* Cal. Unemp. Ins. Code § 631. Unlike FICA, these are general exclusions

[4] Note, however, the scenario discussed in footnote 3, where a parent provides paid IHSS care to their minor child.

based purely on family relationship, not limited to the "domestic service" context. Nearly identical exclusions exist for the Federal Unemployment Tax Act (FUTA).[5]

As in FICA, however, the California UI exclusions are based on the worker's family relationship to their <u>employer</u>. Therefore, a homecare worker's family relationship to their <u>client</u> is relevant only insofar as the client is also the employer. California's UI statute has IHSS-specific provisions that explicitly assign employer status to "the recipient of such services" where the government "makes or provides for direct payment to a provider chosen by the recipient." Cal. Unemp. Ins. Code § 683.

For the family-based exclusion to apply, however, the client not only must be <u>an</u> employer but also the <u>sole</u> employer. If, instead, the state or the county public authority is also a joint employer, then the family-based exclusion would not apply to its employment relationship with the worker. Several IHSS workers—parents caring for their adult children—made just this argument in successive cases that eventually led to the California Supreme Court's 2021 decision in *Skidgel v. California Unemployment Insurance Appeals Board*, 493 P.3d 196 (Cal. 2021).

Skidgel held that the California unemployment insurance statute's identification of IHSS care recipients as employers was intended to establish them as *sole* employers, to the exclusion of the state or local public authorities. This employment relationship was, in turn, thereby excluded from UI coverage due to the parent-child relationship involved, with no other (joint) employment relationship lacking this family component.

Notably, *Skidgel* relied heavily on general provisions of California's IHSS statutes—not specific to UI—that make the state financially responsible for paying employment-related taxes "on the recipient's behalf as the employer." Cal. Welf. & Inst. Code § 12302.2(b). The Court construed these provisions as "send[ing] the message that in the Direct Hiring context, the recipient is the *sole* employer, with the recipient's legal duties as employer being the responsibility of the state." 493 P.3d at 204. The Court further held that this basic function and division of labor survived the subsequent introduction of the public authority system, which authorized the creation of public employers for collective bargaining purposes but not for other ones, and specifically not for the payroll functions previously assigned to the state. Cal. Welf. Inst. Code. §§ 12301.6(c)(1), (i)(1).

Prior to the California Supreme Court's 2021 ruling in *Skidgel*, there were two attempts by the Legislature to reach a different result. First, in 2016, just before the state Unemployment Insurance Appeals Board initially ruled against eligibility in *Skidgel,* but after a similar case had

---

[5] The only difference is that FUTA uses an age cutoff of 21, not 18, for excluding children employed by their parents. *See* 26 U.S.C. § 3306(c)(5). Note, however, that state UI eligibility is not strictly tied to FUTA coverage, unlike the tighter Social Security/FICA connection.

gone the other way, the Legislature passed AB 1930. This bill would have created an advisory panel to review IHSS workers' access to a wide variety of employment-related benefits when they were the spouse or parent of the client, but Governor Brown vetoed it. Second, in 2020, after a state appeals court upheld the denial of UI benefits in *Skidgel* and while it was under review at the Supreme Court, the Legislature passed AB 1993. This bill would have established UI eligibility for IHSS workers when they were the spouse, child, or parent of the client. Again, Governor Newsom vetoed it.

Because *Skidgel* relied both on IHSS-specific provisions of the Unemployment Insurance Code and on statutes establishing IHSS itself, it does not govern otherwise similar private-pay scenarios. There, if the homecare worker has a family relationship to the client that would exclude them from coverage under Unemployment Insurance Code § 631, the decisive question will be whether the worker has an employment relationship (joint or otherwise) with a third-party agency; if so, the exclusion will not apply.

California Workers' Compensation

Summary: Family relationships and IHSS employment structure plausibly relevant, but ultimately no exclusion.

Counterintuitively, current law for workers' compensation coverage is the opposite of unemployment insurance, despite very similar underlying statutes. Under a 1984 California appeals court ruling, the statutory scheme does not establish IHSS clients as the sole employer for workers' compensation purposes, and, given the facts of how IHSS operates, the state is a joint employer of IHSS workers. *See In-Home Supportive Servs. v. Workers' Comp. Appeals Bd.*, 152 Cal. App. 3d 720 (Ct. App. 1984). Therefore, the workers' compensation statute's exclusions for domestic workers do not apply to IHSS workers because the state as an employer cannot benefit from exclusions applicable to household employers. This result is the opposite of the one that *Skidgel* reached with respect to unemployment insurance, where family-based exclusions were held to apply to IHSS workers (with the relevant family relationship to the client) because the statutory scheme established the IHSS client as the only possible employer.

In-Home Supportive Services was an early and influential decision both about IHSS specifically and about the concept of joint employment generally. The facts involved an IHSS worker in a very sympathetic situation: she had worked steadily as an IHSS worker for a series of clients but had only recently begun with her latest client when she was injured on the job. California's workers' compensation statute at the time (and still today) had two exclusions specific to domestic workers.

The first exclusion limited coverage to workers with at least 52 hours of work and at least $100 in pay with their employer in the 90 days preceding the injury. *See* Cal. Labor Code § 3352(h)

(1984).[6] Because the worker had begun with this client only a few days before the accident, this provision excluded her if one counted only her hours and earnings with the new client rather than all her IHSS work.

The second exclusion was (and is) based on family relationships: For domestic workers specifically, they were excluded from workers' compensation if they were the parent, spouse, or child of the client employer. *See* Cal. Labor Code § 3352(a)(1) [formerly Cal. Labor Code 3352(a) (1984)]. Note that this exclusion is slightly broader than the similar ones found in FICA and UI: here, any worker caring for their parent is excluded, rather than only workers under 18 or 21. This family-based exclusion was not at issue in the *In-Home Supportive Services* case.

As was true for UI in *Skidgel*, the *In-Home Supportive Services* court considered both a workers' compensation statutory provision pertaining to IHSS employment and the general provisions establishing the IHSS scheme. The workers' compensation provisions of the Labor Code included one specifying that a direct-hire IHSS worker "shall be deemed an employee of the recipient of such services for workers' compensation purposes" (emphasis added) and cross-referencing the same provisions about state responsibility for payroll obligations discussed in *Skidgel*. Cal. Lab. Code § 3351.5(b) (citing Cal. Welf. & Inst. Code § 12302.2). The *In-Home Supportive Services* court placed considerable weight both on the nonexclusive nature of the word "an" and on the broad and inclusive nature of "employment" for workers' compensation purposes generally. It also performed a detailed historical review of the narrowing of domestic worker exclusions over time in the workers' compensation context.

Having concluded that the statute merely established that the IHSS client was "an employer," not necessarily the only employer, the court proceeded to assess whether the state was also a joint employer. It concluded that it was, based on various forms of supervisory and financial authority that rested with the state (or with counties acting as agents of the state).

It is challenging to reconcile *In-Home Supportive Services* with the later opinion from the higher California Supreme Court in *Skidgel*. Nonetheless, when presented with the analogy to *In-Home Supportive Services*, the *Skidgel* court declined to cast any doubt on the earlier decision. Instead, it emphasized subtle differences in wording between the UI provisions at issue in *Skidgel* and the workers' compensation provisions at issue in *In-Home*. The *Skidgel* Court did not address the extent to which its analysis of the underlying IHSS statutory scheme in Welfare & Institutions Code § 12302.2—which refers both to unemployment insurance and to workers' compensation, and which is cross-referenced in both the UI and workers' compensation statutes—also bore on the workers' compensation issue. Nor did *Skidgel* address the fact that the *In-Home* court had interpreted those IHSS provisions somewhat differently.

---

[6] This exemption was subsequently narrowed slightly to add the proviso that hours and earnings could satisfy the requirement if they had been "contracted to be" for the requisite amounts, even if less work had actually occurred. The current provision reflecting this can be found as California Labor Code § 3352(a)(8).

In-Home was one of three early major appellate decisions about joint employment in IHSS. Shortly before it, the federal Court of Appeals for the Ninth Circuit had decided *Bonnette v. California Health & Welfare Agency*, 704 F.2d 1465 (9th Cir. 1983), which found a joint employment relationship for purposes of the federal minimum wage. In 1990, however, another California appeals court declined to follow *In-Home* and *Bonnette* when it decided (over a vigorous dissent) that the County of Los Angeles was not a joint employer of IHSS workers for purposes of public sector labor law. *SEIU v. Cnty. of Los Angeles*, 225 Cal. App. 3d 761 (Ct. App. 1990). It was this *SEIU* decision that led the Legislature to amend the IHSS statutes to establish the current public authority collective bargaining system.

Notwithstanding subsequent courts' later reluctance to extend *In-Home*'s joint employment analysis to the collective bargaining and UI contexts, there is no indication that *In-Home*'s holding with respect to workers' compensation is under threat. Legal developments aside, one potential rationale for undermining *In-Home* would be subsequent changes to IHSS itself. Such changes could, in theory, affect the fact-sensitive analysis of joint employment. Notably, however, a fairly recent California appeals court rejected this argument in the context of an IHSS wage & hour claim. *Guerrero v. Superior Ct.*, 213 Cal. App. 4th 912 (2013), *as modified on denial of reh'g* (Mar. 11, 2013), reaffirmed the vitality of *Bonnette* and extended it to California wage and hour law. Moreover, *Guerrero* relied heavily on *In-Home* in its reasoning that the county and its IHSS public authority could be joint employers alongside the client.

More recently still, and after the California Supreme Court's *Skidgel* decision, another California appeals court simply shrugged and accepted the patchwork of context-specific decisions, explaining (in yet another legal context less relevant here) that "cases [including *In-Home*] show that whether the State is a joint employer of IHSS providers in the direct hiring context varies based on the statutory scheme involved, whether wage and hour law, workers' compensation, or unemployment insurance." *Yalung v. State of California*, 98 Cal. App. 5th 71, 88 (2023). Thus, there is no indication that *In-Home* has lost its vitality, despite the intervening four decades and the contrary approach to UI established by *Skidgel*.

Supplemental Security Income (SSI) "Deeming" of Homecare Worker Wages

Summary: Live-in status, family relationships, and IHSS funding together exclude a homecare worker's IHSS wages from being "deemed" available to an SSI-receiving client.

The analyses above all pertain to a homecare worker's exclusion from tax liability or benefits eligibility. When a relative provider lives with the client, a distinct but related question may arise: do the worker's wages affect the client's eligibility for SSI? This question may arise

frequently in the IHSS context, where the client's disability provides the basis both for receiving IHSS services and for receiving SSI cash benefits. And insofar as the related homecare worker and client share household expenses, the client's access to SSI has a direct impact on the worker.

This potential sharing of expenses within a household is also the basis for an SSI eligibility concept known as "deeming." SSI is a means-tested program that establishes eligibility and sets benefits amounts based on whether the SSI recipient has sufficient income ("means") to reach the minimum threshold set by the program. Normally, this means-testing analysis focuses on income received directly by the recipient (wages, other public benefits, etc.). In addition to the means test, SSI is available only to people with a disability or age 65+. When a close family member lives with an SSI recipient but does not themselves meet the age or disability requirement, the question arises whether their income is, in practice, available to help the SSI recipient meet their needs. SSI generally answers this question with rules that "deem" some of a co-resident spouse or parent's income available to their otherwise SSI-eligible spouse or minor child. That deemed income then reduces the size of the SSI recipient's benefits or may eliminate means-tested eligibility altogether.

Ordinarily, then, a co-resident parent or spouse would have their wages deemed available to their otherwise SSI-eligible minor child or spouse. However, in the IHSS context, there is an applicable exclusion with some broad similarity to the "difficulty of care" income tax exclusion with which we began. The starting point is an SSI policy that excludes from income "social service" payments designed to enable social inclusion of people with disabilities, including through avoiding institutionalization. *See* U.S. Social Security Administration, *Program Operations Manual System* (POMS) § SI 00815.050. Under this policy, IHSS payments directly to an SSI recipient to enable them to hire a homecare worker would clearly qualify as excluded social service payments with no impact on means-tested eligibility. *See* POMS § SI 01320.175. Social Security Administration policy reaches the same result when IHSS directly pays the homecare worker to provide the same social services; IHSS wages are excluded from deeming when they are paid to a co-resident parent (of a minor SSI recipient) or spouse to provide supportive services to the SSI recipient in question. *See id.*

The Retirement Paradox for California's Aging Workforce in the Homecare Industry

Project leads: Jennifer Jihye Chun and Saba Waheed
Research Team: Lucero Herrera, Monica Macias, Noah Zatz, and Katherine Marino
Graduate student researchers: Sandra Garcia and Yurim Lee
Community partners: Amanda Steele, SEIU 2015; Michelle Mattingly and Desmond Prescott, United Domestic Workers; Aquilina Soriano Versoza, Pilipino Workers Center

Supported by the UCLA Social Impact Transformative Grant (2024-25)