

Paying Domestic Help's Taxes and Benefits: "Who Does This?"

By Diane Krausz, Esq. 1/9/15 (revised from EASL blog posted 1/6/15)

The proper payment of payroll taxes and related compensation benefits for domestic help, as required by federal, state and city authorities, has long been an area of low priority, even among the majority of law-abiding citizens. Most people who employ domestic workers have, in fact, blatantly chosen to ignore any obligation to pay benefits or taxes, especially when hiring part-time help.

The press and public alike had a field day in 1993 with "Nannygate," when two of Bill Clinton's prospective candidates for United States Attorney General were disqualified for employing illegal aliens – and not paying Social Security taxes – to watch their children. In a bizarre twist, rather than learning a lesson from those candidates' embarrassments, many today will use as their excuse for not offering their domestic employees proper benefits, "So? I'm not running for office!"

But bear in mind: Failure to pay (or even pay attention) to these legally required mandates could potentially cost a well-meaning citizen thousands of dollars in liability expenses and back taxes. For 2015, the lowest point of entry to be liable for such taxes and benefits for a domestic worker was a minimum of \$1,900 per year – approximately \$36.50 per week, or \$158 per month.

Recently, the Internal Revenue Service streamlined payment of federal tax by combining the obligation to pay domestic workers with the employer's personal tax return in a Schedule "H." As a result, unless otherwise required by the employee, payment of federal taxes for domestic employees can be reported and paid annually on this form and at the same time cover the taxpayer's own tax obligations.

However, not one of the fifty states, including New York, has yet to follow the IRS' lead. Instead, states still require a separate quarterly filing of taxes for domestic employees, as well as payment of a workman's compensation policy (which is compulsory in New York).

Over the past 10 years, the risks involved in not following this method have begun to outweigh the costs and burdens of following it, because failure to comply has often caused the employer hugely expensive and burdensome ramifications.

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Here are a few cautionary stories:

Example 1. A man ("John") hired a caretaker "off the books" to facilitate care for his elderly mother, paying the caretaker in checks made out to "cash." The caretaker in turn "subcontracted" out some of her required care to third parties and paid them with a portion of the cash wages she received. The caretaker "fired" one of these third-party subcontractors for negligence. This third-party subcontractor in turn filed a wrongful termination suit against John in New York State. John now has a notice of failure

to pay NYS taxes and workmen's compensation from the New York State Insurance Fund dating back to 2012. He is currently facing a penalty of non-payment of \$72,000 per year for three years, or a total of \$216,000.

Example 2. In instances in which a terminated domestic employee wants to claim unemployment benefits from an employer when the employer has never filed quarterly returns to the state, the State will first send the employer letters that require the employer to get into compliance ASAP. After that, should the employer not comply, the state assesses a failure to file penalty. In New York, that is \$1,000 per quarter.

Example 3. A nanny agreed to be paid by a family in cash "off the books." A month later, while playing with her charges, the nanny slipped, fell on her back and was severely injured – requiring a minimum of three weeks of bed rest and physical therapy. Because she was not covered by workmen's compensation, the nanny expected the family to pay all hospital and medical costs, in addition to her full salary during her recovery and further asked that they file an illegal liability claim on their homeowner's insurance policy. The result was a cost to the family of thousands of dollars -- which the family is paying in lieu of a lawsuit that was threatened by the nanny.

In the past, employers have attempted to compromise in lieu of offering full payment and filing of all requisite taxes and benefits for a domestic worker. These include:

A.) Paying the domestic employee as an independent contractor

The IRS clearly points out that this treatment and definition is incorrect if the employee works under the control and direction of the employer.

B.) Paying the employee only partially as an employee, with the remainder "off the books"

In the case of a subsequent injury, or termination that is reported by the employee to the state or federal government, the failure to pay partial salary may be seen as a full, not partial violation.

C.) Deducting the domestic employee as a salaried employee on a related company of employer

Apart from the validity of taking the domestic employee as a legitimate business deduction for taxes, the payment of workmen's compensation for the domestic employee as an employee of another

company would be inappropriate and not provide correct coverage for the domestic employee, whose place and type of work would also most likely be misrepresented and not properly covered.

A more efficient solution is to hire an outside service that specializes in the processing of domestic payroll and its related issues. Using a competent payroll service can be a cost-efficient way to stay current with federal, state and local employment regulation and tax laws, and prevent claims of non-payment of proper taxes and insurance coverage.