

Tax and Legal Responsibilities When You Hire a Caregiver

Overview

A summary of your tax and legal responsibilities when you hire in-home care for a child or adult family member.

- Taxes
- Forms you may need to file
- Determining whether a caregiver is an “employee”
- Failure to pay employment taxes
- Advantages to a caregiver of being paid “on the books”
- Proof of caregiver’s citizenship
- Undocumented immigrants
- Minimum wage
- Insurance
- U.S. government forms and publications
- Sample worksheet

If you pay someone to come to your home and care for your child or an adult family member, or if you are involved in hiring in-home care for an older relative, you are probably concerned about your legal obligations as an employer. Do you need to pay taxes on your caregiver’s salary? What forms do you need to fill out and when do you file them with the government? This guide will help you understand what your responsibilities are and how to meet them.

This information is current as of May 2009 for the 2009 tax year but is subject to change. The general information presented here may not apply to your particular situation, so it’s always a good idea to check with your own accountant or tax adviser. You may also want to contact the Internal Revenue Service (IRS) at 800-829-1040 or www.irs.gov for the most up-to-date tax information, and the U.S. Department of Labor at 866-4-USA-DOL or www.dol.gov for current information on wages and employment.

Taxes

If you paid an in-home caregiver or helper \$1,700 or more in 2009 and the person qualifies as an “employee” in the government’s sense of the word (instead of an independent contractor or an agency’s employee), both you and the caregiver have certain tax obligations. You and your employee must *each* make payments to the government for:

- *Social Security and Medicare.* These taxes are often referred to together as FICA (Federal Insurance Contributions Act) taxes. The amount that *each* of you owes is 7.65 percent of the caregiver’s wages. You are responsible for your employee’s share of these taxes as well as your own. You can either withhold your employee’s share from his or her wages or pay it from your own funds. You are required to file these taxes once a year with your income tax return using Schedule H. This requirement does not apply to caregivers who are any of the following:
 - your spouse
 - your child who is under the age of 21
 - a student who is under the age of 18 at any time during the year
 - your parents (in some cases)

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If you pay more than \$1,000 to caregivers and household help (not including your spouse, parent, or your child younger than 21) in any calendar quarter of the year, even if no one person earns that amount, you must also make payments to the government for:

- *Federal unemployment tax (FUTA)*. You owe the federal government unemployment tax that is usually 0.8 percent of the caregiver's first \$7,000 of annual wages if you also pay state unemployment tax on these wages by April 15. If you do *not* pay state unemployment tax on the wages, the federal unemployment tax rate is 6.2 percent. You may not withhold these taxes from the caregiver's wages, but must pay the tax from your own funds. You are required to file these taxes once a year.

You are not required to withhold federal income tax from wages you pay a household employee. However, if the caregiver requests and you agree, you may also withhold:

- *Federal income tax and Earned Income Credit (EIC)*. For federal income tax withholding guidelines and instructions for EIC payments, see IRS Publication 15, Circular E, *Employer's Tax Guide*.

Contact your state employment tax office for state requirements. Depending on the regulations in your state, you may be required to withhold state income tax or to pay disability insurance, worker's compensation, and state unemployment tax.

Forms you may need to file

If you are required to pay Social Security and Medicare (FICA) taxes or federal unemployment insurance (FUTA) on your caregiver's wages, or if you agree to withhold federal income tax, you will need to file:

- *Form SS-4, Application for Employer Identification Number (EIN)*. You will need to include the EIN on the tax and reporting forms you file for your caregiver. You don't have to file this form if you apply for and receive an EIN number online and save the number the government sends you. To apply online, search www.irs.gov for "Apply for an Employer Identification Number (EIN) Online."
- *Form W-2, Wage and Tax Statement*. You must complete and give copies of this form to your caregiver by February 1 (or earlier, in some cases where the caregiver's employment ended during the previous year) to report on wages paid and taxes withheld during the previous year, and send Copy A, along with Form W-3, *Transmittal of Wage and Tax Statements*, to the Social Security Administration by March 1 (or by March 31 if you file your Form W-2 electronically).

- *Schedule H (Form 1040), Household Employment Taxes.* Use this form to report the caregiver's federal employment taxes, and file it with your federal income tax return by April 15.

Determining whether a caregiver is an “employee”

The government uses several different factors to determine whether a caregiver is an “employee” (whose employment taxes you must pay) or an independent contractor (who is responsible for her own taxes).

Some of these factors include whether the caregiver comes into your home on a regular basis and whether you control what work is done and how it is done (whether the worker uses her own equipment, for example). In deciding whether a caregiver is an employee, it does not matter whether she works part time or full time; whether you hire her directly or through an agency; or whether you pay her by the hour, week, or job.

A caregiver might not be considered an employee if she was sent by an agency *and if the agency sets the fee and exercises control over her work* -- for example, by stating what tasks she will and will not do, setting rules of behavior and appearance, or requiring regular reports about her work. Because there are no hard and fast rules about whether a caregiver or household worker is your employee, it is always advisable to talk with your attorney or tax adviser.

Failure to pay employment taxes

You are in violation of the law if you are required to pay employment taxes and fail to do so. You may be forced to pay penalties, interest, and back taxes, and may even be subject to criminal penalties.

If you fail to pay employment taxes, you also deprive yourself of the benefits of some significant tax breaks. If you are paying your provider “on the books” -- that is, making the appropriate employment tax payments and filings -- you may be eligible for considerable tax savings if your employer offers a pretax set-aside program (also known as a dependent care flexible spending account, or FSA, or a dependent care assistance program, or DCAP) or if you qualify for the federal Child and Dependent Care Tax Credit, which can be claimed when you file your annual tax return. If you qualify for the credit, you can include your share of the federal and state employment taxes you paid, as well as the employee's wages, in calculating your dependent care expenses.

Many families have found that paying their providers on the books can actually be *less expensive* than paying them “off the books.”

Advantages to a caregiver of being paid “on the books”

Some caregivers resist being paid in a legal way because they fear that once you, their employer, begin filing forms with the IRS, the IRS will come to them for income taxes.

You might respond to caregivers who feel this way by reminding them that:

- Refusing to pay taxes is illegal and may expose them to significant penalties, interest, and back taxes.
- Their long-term financial security is better protected if they obey the law. If no Social Security payments have been made on their behalf, they will not receive Social Security benefits in retirement. In addition, if they become unemployed, they will not be entitled to receive unemployment benefits unless those payments have been made.

Proof of caregiver’s citizenship

In 1986, Congress passed a law requiring all employers to verify that any person hired for a job in the U.S. is either an American citizen or eligible to work here legally. You can’t just ask your caregiver about his citizenship or if he has a green card; the two of you must sign U.S. Citizenship and Immigration Services (USCIS) Form I-9, *Employment Eligibility Verification*, and your caregiver must show you, no later than the first day of work, original proof of citizenship or employment eligibility, such as a U.S. passport or alien registration card, plus some sort of picture identification. You must go through this process even with caregivers hired through an agency.

Call the USCIS at 800-870-3676 to order a Form I-9 or visit their Web site at www.uscis.gov to download the form. The completed Form I-9 doesn’t need to be filed with any government agency, but you are required to keep it for your records.

Undocumented immigrants

It is against the law to knowingly employ an undocumented immigrant who cannot legally work in the U.S. When you hire a caregiver or other household worker, she must complete the employee part of USCIS Form I-9, and you must verify her citizenship in order to complete the employer part of the form.

Employers are required by law to pay FICA and FUTA taxes regardless of an employee’s legal status. Many employers fail to pay employment taxes because their caregivers are undocumented immigrants who fear discovery by the USCIS. In fact, the IRS does not currently share such information with the USCIS -- although it may in the future. But the bottom line is, as an employer, you do need to pay employment taxes. If your caregiver doesn’t have a Social Security

number, then the line for a Social Security number can be left blank, and the IRS will assign a temporary number for you to use on tax forms.

Remember, however, that you need your caregiver's Social Security number in order to qualify for the Child and Dependent Care Tax Credit or to participate in an employer's pretax set-aside program. A temporary number will not be enough to qualify you for the tax benefits of these programs.

Minimum wage

You must pay your caregiver at least minimum wage although some states offer exemptions in some cases. The federal government has set the minimum wage at \$6.55 per hour effective July 24, 2008, and \$7.25 effective July 24, 2009. The minimum wage varies state by state and may be higher in some states. Federal law requires you to pay overtime rates for work in one week that exceeds 40 hours unless the caregiver lives in your home. Some states have other requirements -- giving workers the right to accrued vacation time, for example. Call your state's Department of Labor office to find out about the minimum wage, any exemptions, and special labor requirements in your state.

Insurance

Some states require you to carry a separate worker's compensation policy for an in-home caregiver or household worker. You can call your local Department of Labor office to find out about your state's requirements.

It's also a good idea to ask your insurance agent if your caregiver needs to be specifically included on your car insurance policy (if he will be using your car) and whether your homeowner's policy provides for compensation to your caregiver if he is injured on the job.

U.S. government forms and publications

Call the IRS's toll-free order line at 800-829-3676 (800-829-4059 TTY/TDD) to ask for any of the following publications, or obtain them online at www.irs.gov:

- *Publication 926: Household Employer's Tax Guide*. An 18-page overview that can help you understand what your tax obligations are for a caregiver or other household employee. Includes a directory of state tax offices.
- *Publication 15-A: Employer's Supplemental Tax Guide*. Includes a definition of who is considered an "employee" for tax purposes.
- *Publication 15, Circular E, Employer's Tax Guide*. Includes federal income tax withholding tables.
- *Form SS-4: Application for Employer Identification Number (EIN)*.

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- *Form 940: Employer's Annual Federal Unemployment (FUTA) Tax Return (and instructions).*
- *Form W-2: Wage and Tax Statement (and instructions) and Form W-3: Transmittal of Wage and Tax Statements.*
- *Form W-4: Employee's Withholding Allowance Certificate (and instructions).* Your caregiver fills out this form so that you will know how much, if any, income tax to withhold from her paycheck.
- *Form 2441: Child and Dependent Care Expenses (and instructions).* Use this form to claim a tax credit for your dependent care expenses.
- *Schedule H, Form 1040: Household Employment Taxes.* Attach to your personal income tax return to report federal employment taxes for your household employee.
- *Publication 910: Guide to Free Tax Services.* Lists free tax information services, including tax education and assistance programs.

Many public libraries make tax forms and publications available. Check with the reference desk at your local library.

A sample worksheet follows.

Sample worksheet

You may want to use the following worksheet as a general guide for calculating estimated taxes and additional costs associated with hiring an in-home caregiver:

Employer weekly gross wages \$_____

Employer insurance and tax obligations

Employer Social Security at 6.2% \$_____

Employer Medicare at 1.45% \$_____

State unemployment at ___ % \$_____

Federal unemployment at 0.8% \$_____

Other _____ \$_____

Total weekly employer liability \$_____

Example

A couple living in New York State have agreed to pay their caregiver \$250 per week. Their weekly employer tax liability is \$32.13 calculated this way:

Employee weekly gross wages **\$250**

Employer insurance and tax obligations

Employer Social Security at 6.2% \$15.50

Employer Medicare at 1.45% \$ 3.63

State unemployment at 4.4%* \$11.00

Federal unemployment at 0.8% \$ 2.00

Other \$ 0.00

Total weekly employer liability \$32.13

* This unemployment withholding rate is an estimate and may not reflect your actual unemployment insurance withholding rate if you live in New York State.

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