

The Hidden Liabilities of Home
Companions

THE ONE MINUTE CAREGIVER



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by Benjamin W. Pearce

At-home care using home companions or home health aides is the single largest, yet informal system for the delivery of healthcare services in this country today accounting for an estimated 95% of care delivered. Families that hire caregivers or outside contractors such as home health aides or home companions to perform a variety of services may unknowingly be exposing themselves to a variety of risks that may not be covered through their homeowner's or general liability insurance policies. In addition, as an employer, there are certain tax consequences associated with the employment of a home companion for which they may be unaware.

Tax Consequences

Domestic employment practices first received media attention when Attorney General-designate Zoe Baird, was unable to secure what was expected to be a unanimous approval during her January 1993 Senate confirmation hearings due to the failure to pay employment taxes and violation of immigration laws relating to the employment of her domestic help. She was also found to be subject to penalties and fines relating to her employment practices. The

Internal Revenue Service requires payroll tax filings by a domestic employer who pays a caregiver more than \$1,200 cash wages in a calendar year. These payroll tax obligations may include: Social Security and Medicare Taxes (7.65% of Gross Wages), Federal Unemployment Tax (FUTA), State unemployment and disability insurance taxes levied on the employer, and advance payment of earned income credit for eligible employees. The employer (often the family of the elderly person in need) is required to collect the employee's social security and Medicare taxes. Should the employer fail to collect, they still remain responsible to remit these taxes for the employee. Congress revised the "Nanny Tax" legislation in October 1994, offering employers alternative means to remit the federal payroll taxes for wages paid. This legislation requires employers to disclose the wages paid to household staff on the employer's personal income tax return. Failure to disclose this information will compromise the integrity of your personal tax return. Additionally, there is no statute of limitations on the failure to report and remit federal payroll taxes. You are most likely to be "caught" when a former employee files for unemployment, disability or social security benefits. The state then realizes that the person was receiving unreported compensation. Employers are generally required to pay back taxes, penalties and interest charges, and usually professional fees for an accountant and/or

attorney. Employers are required to give their employee a wage and tax statement (Form W-2) no later than January 31.

Additionally, domestic employees must be paid at least the Federal minimum wage, currently \$5.15 (9/1/97). Live-in employees must be paid for every hour worked; all employees must be paid overtime for any hours exceeding 40 hours per week. If the person lives on site then the Department of Labor assumes 8 hours sleeping or 16 hours working per day, or 112 hours per week. Since anything in excess of 40 hours per week is required to be paid at time and one half, this situation would result in 72 weekly hours of overtime. This translates to \$2,600 per month for 24-hour coverage, not including loading for payroll taxes, which is comparable to the cost of assisted living. For a live-in, fair value of room and board can be deducted from straight pay. Failure to observe employment regulations relating to the payment overtime can subject the employer to multiple damages for the unpaid amounts. Also you are legally required to verify your candidate's employment eligibility under immigration laws using Form I-9.

Insurance

While most home health agencies normally carry comprehensive general liability insurance and professional liability insurance each with separate limits of \$1 million per occurrence, and workers compensation insurance, most independent home companions do not. This means that if the home companion that you hired is injured on the job while providing care for your family member you may be liable personally for their injury. New Jersey is one of

several states that take the decision for workers' compensation insurance out of your hands by mandating the coverage. Prices vary, but a typical policy costs around \$400 for employees making at least \$15,000 annually. A typical back injury, which is very common among caregivers, can easily reach \$50,000 in medical expenses and lost wages. If the injury results in a disabling condition the employer may be liable for long-term loss of income. Additionally, should there be no workers' compensation insurance in place, the injured caregiver's remedy could entail a law suit against the employer claiming negligence, and typical homeowners policies will not cover any injury to an employee. Be aware that experience among employers has proven that, caregivers tend to have a high incidence of injuries when they realize that their employment may be coming to an end.

Personnel Screening

It is estimated that over 2 million older adults are mistreated each year in the United States. Elder mistreatment first gained attention as a medical and social problem about 20 years ago, when the term "granny battering" first appeared in a British medical journal. The American Medical Association defines elder mistreatment as "an act or omission, which results in harm or threatened harm to the health or welfare of an elderly person." Recognizing mistreatment is often very difficult. The older adult may be unable or unwilling to provide information due to a cognitive impairment or out of fear of retaliation by the abuser. Older adults are often fearful of being placed in a nursing home, and some may prefer to be abused in their own home rather than moved to such a facility. The elderly

have been found to be taken advantage of, stolen from, verbally and even physically abused. Most states now require employers to perform a criminal offender record information check prior to providing employment to caregivers. This is a simple procedure that is often overlooked by families hiring home companions. Often these individuals are available for employment because they failed the screening process and were unable to secure full time employment due to past employment difficulties. It is also important to verify the status of your companion's certification, and if they are qualified or trained to provide the services that the elderly person requires. Many home companions may be forced to provide treatments or medication administration that is not permitted by state law under their license simply because there is no one else available to provide it.

Understanding your liability exposure when employing independent home care companions can be a complex task. While the access to this apparently inexpensive pool of help for an aging parent may at first glance be an attractive option for many families seeking to help their aging parents remain at home, the ultimate risks to the family could be devastating. Further, as the level of care increases over time, it is often much less expensive and more advantageous to seek healthcare professionals to deliver this care in a safe, homelike environment where the quality of life can be very high.

Further Reading

Pearce, Benjamin W. *Senior Living Communities: Operations Management and Marketing for Assisted Living, Congregate, and Continuing-Care Retirement Communities*. Second Edition, Baltimore: The Johns Hopkins University Press, November 2007. pp. 368

Pearce, Benjamin. *Elder Care Activities: 105 Great activities that you can do at Home, in Assisted Living, a Retirement Community or Nursing Home*. Warwick, NY: Elder Care Advisor Press, March 2013.

Pearce Benjamin. *Making the Move to a Retirement Community: A Complete Family Guide*. Warwick, NY: Elder Care Advisor Press, March 2013.

Pearce, Benjamin. *The One Minute Caregiver*. Warwick, NY: Elder Care Advisor Press, April 2013.

Pearce, Benjamin. *Assisted Living and Memory Care Design: An Operator's Wish List*. Warwick, NY: Elder Care Advisor Press, March 2013.