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What to Know If You Are The Boss of a Caregiver

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It's not just about the "nanny tax." When using a home health caregiver, it's crucial to know whether you are the caregiver's employer or someone else to avoid tax and legal snags.

With more baby boomers seeking help for aging parents, the in-home care industry is booming with a wide range of service providers, from geriatric-care managers to home-care agencies. Contractual arrangements and employment policies vary just as widely. So it's wise for consumers to ask questions up front about tax obligations and insurance coverage.

"Families need to be aware of all the ramifications," says Bernard A. Krooks, a certified elder-law attorney and founding partner of Littman Krooks LLP, a New York law firm.

Some families elect to privately hire a caregiver because they want to choose the person they think will be the best to provide the care. Others go to an outside party, such as a home health-care agency, to find the help they need. But that doesn't always mean they are off the legal hook.

Many nurse registries and employment agencies don't actually employ or supervise workers; they simply find them and place them in a home setting. Under such arrangements, the family may end up being the official employer, responsible for pay, taxes and other obligations. Employing a relative or friend can put a family in the same situation.

"Household help is anyone who does help in or around your home," says Jill Senso, education coordinator with the National Association of Tax Professionals, or NATP. "The worker becomes your employee if you control what work is done and how it is done."

If you dictate when the caregiver is on duty and supply the equipment to provide care, you're building an employer-employee relationship. Even a part-time caregiver can be considered an employee, especially if the caregiver doesn't provide the same type of service to others, according to Mr. Krooks.

If you pay a household caregiver who is your employee more than \$1,700 in 2009, the tax code requires you to withhold and pay Social Security and Medicare taxes. (The

Internal Revenue Service makes some exceptions, but they typically don't apply to situations in which adult children hire caregivers for aging parents.)

If you pay the caregiver wages of more than \$1,000 in any quarter, federal unemployment taxes must also be paid. State and unemployment taxes must be withheld and paid as well. If the taxes are unpaid, the taxpayer must pay what's owed, and will face late filing penalties of between 5% and 25% of the underpayment plus interest, according to the NATP.

Consumers can avoid tax snags if they pay an agency directly, and if the agency is the caregiver's official employer. For instance, the National Private Duty Association requires its members to assume all responsibility for payroll and all related taxes, according to Executive Director Kim Stoneking. Another option is to hire a geriatric-care manager who screens, arranges, monitors and pays the caregiver on your behalf.

Employers are also responsible for verifying that workers are legally entitled to work in the U.S. An Employment Eligibility Verification form -- I-9 Form -- must be completed and kept on file by the employer.

Employee injuries pose one of the biggest financial risks. Federal and state laws require employers to take out workers' compensation insurance. If there is none, and a caregiver is hurt on the job, the family is responsible for medical expenses and disability payments. Consumers shouldn't assume homeowner's insurance will cover this, as policies may exclude household help. They may need to buy general liability insurance.

Discrimination or harassment suits from caregivers pose another risk. An umbrella policy with a discrimination rider can provide protection, but it's expensive, says Mr. Krooks.