

Household Employees and Workers' Compensation

When a family hires an individual to perform duties in or around their home, they are considered a "household employee." The IRS views the worker – whether a nanny, health aide, housekeeper, gardener, cook/chef, personal assistant, estate manager, etc. – as an employee of the family.

Depending on state law and how many hours an employee works for the family, the employer and employee will be subject to varying tax obligations. But are you aware that household employers may be required to carry Workers' Compensation?

If you are a household employer in Illinois and your employee works 40 or more hours a week, you must purchase a Workers' Compensation policy. An employer that knowingly and willfully fails to obtain this insurance may be fined up to \$500 for every day of noncompliance.

Household employers in Wisconsin are not required to carry Workers' Compensation. However, if you don't have a policy already, you should certainly consider purchasing one. **This insurance provides protection for you as the employer, since workers who accept benefits forfeit their right to sue you.** If you have an employee who does physical work – for example, an aide who does lifting – you may especially want to consider purchasing a policy.

Outside of household employees, if you are a small business owner you need to carry Workers' Compensation for your employees. You should check your policy to make sure all information is correct on it (you can do this by calling your insurance agent). For example, if you inherited the policy or your corporation has changed its name, the current name must be on the policy. If your policy paperwork is not in line with your business information, you are risking expensive lawsuits and/or fines.

Employee or Independent Contractor?

We encourage all businesses and business owners to know the rules when it comes to classifying a worker as an employee or an independent contractor.

An employer must withhold income taxes and pay Social Security, Medicare taxes and unemployment tax on wages paid to an employee. Employers normally do not have to withhold or pay any taxes on payments to independent contractors. While the latter may sound ideal, it is very important that you do not treat any employees as independent contractors. You could end up having to pay the employer and employee portions of the tax assessed, and pay penalties and interest on those taxes. You may also have to pay fees for services performed during an audit or to amend payroll reports and other forms.

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Here are two key points for small business owners to keep in mind when it comes to classifying workers:

1. **Control.** The relationship between a worker and a business is important. If the business controls what work is accomplished and directs how it is done, it exerts behavioral control. If the business directs or controls financial and certain relevant aspects of a worker's job, it exercises financial control. This includes:

- The extent of the worker's investment in the facilities or tools used in performing services
- The extent to which the worker makes his or her services available to the relevant market
- How the business pays the worker
- The extent to which the worker can realize a profit or incur a loss

2. **Relationship.** How the employer and worker perceive their relationship is also important for determining worker status. Key topics to think about include:

- Written contracts describing the relationship the parties intended to create
- Whether the business provides the worker with employee-type benefits, such as insurance, a pension plan, vacation or sick pay
- The permanency of the relationship
- The extent to which services performed by the worker are a key aspect of the regular business of the company
- The extent to which the worker has unreimbursed business expenses

Don't Get Hit with an I-9 Fine

A U.S. dentist was fined more than \$10,000 (later reduced to \$5,400) for failing to present proper I-9 forms for employees at his dental office. The dentist argued that he did not need to retain the I-9 forms of current employees who had worked for the practice for more than three years.

The Office of the Chief Administrative Hearing Officer rejected this defense as fundamentally "wrong as a matter of law." It's a big mistake that small business owners can make when it comes to Form I-9 compliance. Many business owners think that after three years they can throw away the forms since employees have been there for a long time.

Form I-9 is used for verifying the identity and employment authorization of individuals hired to work in the United States. U.S. Immigration and Customs Enforcement agents are now conducting I-9 audits more frequently and small employers tend to be disproportionately affected.

Small business owners run into a couple of different problems with I-9 compliance. Many times, they use the wrong version of the form. Or, they don't know how to review eligibility documents. Business owners also sometimes confuse I-9 compliance with E-Verify, which is a free Internet-based system that allows businesses to determine the eligibility of their employees to work in the United States. You may use E-Verify (and in some states you are required to), but you must also complete the I-9; it is not either/or.

In summary, as a business owner you must retain an employee's completed Form I-9 for as long as the individual works for you. You can find instructions and the most current version of Form I-9 at: ppgpartners.net/forms.