Above the Table, or Not — How to Ensure Tax Compliance For You & Your Eldercare Employees

By Jim DeLorenzo

You've hired someone to care for your aging parent, and they've become "part of the family." Inevitably, however, you're faced with how to report your caregiver's salary. Do you do it above the table, or under the table?

We've all heard the horror stories in the national media about public figures with illegal household employees, or public figures who did not pay those employees "above the table." What you may not realize is that you don't have to be a public figure to have those troubles.

"Household employee" is a very broad term – it encompasses babysitters, nannies, companions for the elderly or infirm, maids, caretakers, nurses, nurses' aides, housekeepers, cooks, butlers, family chauffeurs, and some home maintenance personnel.

Over the past several years there has been an incredible increase in the household hiring of eldercare providers, such as nurses, nurses' aides and other caregivers. According to a recent report from the *National Center for Health Statistics*, more than 1.4 million adults over 65 years of age regularly receive visits from paid caregivers.

Television, radio, magazine and newspaper stories about "The Sandwich Generation" – meaning baby-boomers caring for both their own children and their aging parents – are becoming more frequent. In fact, *NBC Nightly News with Brian Williams* and *Business Week* magazine both recently devoted considerable attention to this important issue.

In 2005, statistics from the *U.S. Department of Labor* estimated that the number of people in older age groups, with much greater than average health care needs, will grow faster than the total population by 2014. The number of home health care providers also will increase rapidly as life expectancies rise and as aging children – who are less able to care for their elderly parents – rely more on professional care.

Eldercare issues are affecting an increasingly wider segment of the population as the first wave of baby boomers turns 60. Nearly 15 million of those baby boomers are managing both full-time employment and the added (forgive us) burden of caring for an elderly or disabled family member. It is estimated that 37 percent of those workers in the baby boomer or "sandwich" group spend more time and money caring for their elders than for their own children.

Even more incredible, 65 percent of family members who worked while caring for an aging parent experienced conflict with their jobs, including tardiness, lost hours or income, or sacrificing of vacation time. Because the majority of our elders prefer to remain in the privacy of their own homes, the problems will only continue to grow.

With the older population in the United States on the rise, the need for household employees to provide care to them, as well as the need for the household employer to comply with payroll tax laws for those employees, is greater than ever.

Sure, you can save a little money and decrease paper work by paying a household employee "under the table." But the important thing to remember is that with those "benefits" comes one considerable danger – it is illegal. The risks and penalties of being caught far exceed the short term benefits of paying your employee under the table. Paying "above the table" is the law and provides important benefits and protections for everyone involved.

Many people pay their care provider "under the table" not because they are trying to avoid the law, but because they simply do not understand that the payroll tax laws apply to them. A brief overview of these tax laws as they apply to household employees therefore is in order.

Is your eldercare provider really your "employee"? Generally a household employee is anyone who works in your home under your supervision and direction, and includes babysitters, maids, nannies, health aides, nurses, caretakers, and other similar domestic workers.

A person is not your employee if that person controls most aspects of the work they do and, essentially, is “their own boss.” A self-employed worker or “independent contractor,” generally, will bring her own tools or equipment to your home, sets her own work schedule or hours, and usually also offers her services to the public as an independent business.

Most importantly, in the current climate, and perhaps one of the biggest “danger” areas for household employers, is the responsibility to determine whether your domestic employee can legally work in the United States. You must understand that it is not legal to knowingly hire or continue to employ an immigrant who is not legally allowed to work in the United States.

Although compliance with payroll tax laws may appear complicated at first, federal law only requires a household employer to be responsible for the Social Security and Medicare taxes owed on a care giver’s salary (collectively referred to as the FICA tax), and to pay a modest federal unemployment tax. You are required to withhold half of the FICA tax from your employee’s pay, and then you must pay the other half of the tax from your own pocket. Federal law permits you to withhold federal income tax from your employee’s salary if both you and the care provider agree.

Depending upon your state, you may also be responsible for certain state taxes, such as disability insurance and employment training taxes, some of which are the employer’s obligation and others of which may be the employee’s. Paying “above the table” not only keeps you legal, but it also provides your employee a financial safety net by enabling them to apply for unemployment or disability benefits if needed. Likewise, when you pay your domestic employee legally, she earns credits toward Social Security benefits at retirement and will have a verifiable salary history to enable her to apply for credit cards, car loans or other forms of credit.

Now that you know the advantages of paying “above the table,” how do you keep up? How do you manage a household payroll and keep it all legal?

To paraphrase a favorite movie, let’s assume you’re an honest man (assume away). Typically, household employers report their federal taxes – income tax, FICA, unemployment, and so on – once a year, when they file their individual income tax returns by April 15th. Most states still require their income and employment tax obligations to be paid on a quarterly basis.

There are a number of options available to the household employer for managing payroll and payroll taxes for household employees. In fact, there are enough options that claiming “it’s too difficult” should not be a barrier to complying with the law. As one expert recently noted, it’s in your interest, so it’s worth the bother.

Here are your options.

There’s the time-tested but time-consuming “manual” method of handwritten checks and receipts stapled together, piling up in file folders month-by-month.

Some household employers have enough resources to hire an accountant or payroll service. A typical payroll service, which will calculate the appropriate deductions and may also prepare checks for you, can cost at least $500 per year, maybe more depending on the market and community in which you reside (you’ll probably pay more in New York City than in Lancaster, Pennsylvania, for example).

You may feel skillful enough to do it yourself by creating your own spreadsheet with a software program like Microsoft’s Excel®. Again, this is also a time-consuming approach, which requires that you not only know how to program the spread-sheet, but to manually input all the data yourself.

Integrated accounting software packages, such as the popular QuickBooks®, are excellent, but

provide more features than a household employer will probably ever need. These software packages are not tailored to the household employer market, and can cost about the same per year as a domestic payroll service.

While popular personal financial programs such as Quicken® and Microsoft Money® have penetrated most households with experienced computer users, neither offers a payroll option or information about payroll tax laws.

The *Wall Street Journal* recently noted that “sales of tax preparation software are expected to rise briskly again this year, thanks in large measure to our tax system’s stunning complexity.” It’s this complexity that makes tax preparation software so attractive to the average consumer.

Programs like Intuit’s TurboTax® and H&R Block’s Tax Cut® are currently the market leaders for the general consumer. But, until recently, there were no programs tailored specifically to the payroll tax needs of the household employer.

A software company in suburban Philadelphia, **Essentia Software Corporation**, sells two software packages that expressly address the needs of the household employer – **NannyPay®** and **ElderCarePay™**. **ElderCarePay** is the company’s newest software product and was specifically intended for household employers of nurses, health aides, and other eldercare givers.

ElderCarePay was created by experts with first-hand experience in understanding and complying with the tax laws applicable to household employers and their employees. Designed for simple setup and use, **ElderCarePay** has robust payroll features that ease the burden of tax compliance for household employers.

ElderCarePay handles multiple employees, and prints a basic plain paper pay stub or payroll checks. It also calculates Federal and state payroll withholding taxes, and supports all 50 states. The software package also generates withholding and liability reports, prints Forms W-2/W-3, and a Schedule-H [Household Employment Taxes].

The latest version, **ElderCarePay 2007**, has a comprehensive and well-written *“Employer's Guide,”* which outlines four easy steps to get users started on their way to tax compliance. **ElderCarePay** also includes all relevant Internal Revenue Service forms, and an extensive reference source of state tax agencies.

Unlike the competing payroll services or business payroll and tax preparation software programs mentioned earlier, an annual subscription for **ElderCarePay** costs only $147.95 per year. Included with the purchase of ElderCarePay is online access to all tax table and software updates for a full year. With tax laws constantly being revised, this service alone is a considerable benefit for household employers.

For those who find themselves too busy to set up their own household payroll system, **ElderCarePay** also offers a setup service for a fee, in which their experts will configure the software for the household employer and one employee, and additional employee can be added for a nominal one-time fee.

“Doing it yourself” with a software program like **ElderCarePay** can save a household employer as much as $700 per year compared to hiring a payroll service. A short-term investment of time and money to set up a software program like **ElderCarePay** can bring a number of long-term benefits, both financially and personally.

The need for such a software package increases the longer you employ household help, due to the relationship many people develop with such “personal” employees. They become like family in some cases, and it becomes more difficult to change caregivers. As a personal example, one of my elder relatives has been cared for by one caregiver for the past seven years, but due to that caregiver’s own sudden health concerns, my relative lost this long-term in-home caregiver. This necessitated a move

into a nursing home for my relative, something that no one was happy with and upset everyone involved. While it was not a result of a financial change, it was very difficult to find someone to replace a person who had become “family.”

When you’ve already made the decision to play by the rules, obey the law and pay your household employee “above the table,” the cost savings of implementing software like **ElderCarePay** significantly offsets the cost of a payroll service even in the first year. Ultimately, it’s the right thing to do – for you, your employee, and your loved ones.

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Sources

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