

Employer | Lawyer



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Lynne Hook has been advising and defending employers in employment law matters for over 25 years. She counsels human resources and operations professionals on the legal aspects of employment policies and conducts training and workplace investigations. She founded Employer Lawyer PC.

Prior to starting her own practice and working as a subject matter expert at Axiom Law, Lynne served as in-house employment counsel for a Fortune 500 hotel company with 70,000 employees managing claims and litigation throughout the United States and corporate HR advice. She then lived in Switzerland and worked as employment advisor for an international supply business. Lynne spent eight years at three different large law firms in Los Angeles defending California employment disputes and providing employment law advice to employers.

Lynne's areas of expertise include California employment law, wage and hour law, human resources policies and procedures, employment discrimination awareness and training, and workplace investigations. She holds a certificate from the Association of Workplace Investigators.

Outside of work, Lynne sits on several non-profit boards, including the Dan Murphy Foundation, St. Frances X. Cabrini School, and St. Thomas More Society of Los Angeles. She has also served as the co-chair of social outreach at American Martyrs Catholic Church and as a City of Manhattan Beach Library Commissioner.

Help the Help: How to Properly Hire and Employ a Nanny or Housekeeper Within the Law in California

By Lynne M. Hook, Founder, Employer Lawyer PC, Manhattan Beach, California

In October 2010, news headlines shouted stories of former California gubernatorial candidate Meg Whitman's former housekeeper's illegal status and claims of mistreatment by Ms. Whitman. We were told that it was a union-backed political maneuver to smear Ms. Whitman who claimed to be unaware that her housekeeper had falsified her identification documents. Perhaps both sides were at fault? It seemed to cost Ms. Whitman more than she would have imagined.

We all know many households hire domestic help, documented or not, and fail to pay employment taxes or follow basic employment laws. Do the same executives who pay top dollar law firms and accounting firms to handle their business affairs permit obvious legal violations in their own home? The answer is often yes.

So, why should one worry about this? When is the last time you heard of a neighbor being audited for payroll tax violations? Two primary reasons: penalties are excessive (not to mention potentially derailing any future in public office) but more importantly it is only fair to those who care for our children and clean our bathrooms. It is, simply, the right thing to do.

Let's clear up who is a domestic servant. In California, regular adult babysitters and housekeepers are generally considered employees. For example, if Nora cleans my house once a week earning more than \$750 per quarter, Nora is my employee, not a contractor, and must be treated as such. If I hire a cleaning crew or nanny through an agency, the employer of record is usually the company providing me with the workers and I pay a premium for their role. Just be sure the agency is responsible for taxes and withholdings. The independent contractor rules have been further strengthened in California by the passage of AB5.

What about a tutor hired to supervise children during remote learning? Yes, such a worker would be considered a babysitter or caregiver subject to payroll taxes and eligible for employment law protections unless they are employed by an agency, or self-employed, and you do not control how they do their work.

Here are some basic recommendations for hiring a domestic employee:

1. Check Your Applicant's References

Ask your applicant to provide you with contact information for their last few jobs. Particularly if they have worked as a domestic employee in your neighborhood, you will want to ensure that you know their work experience.

2. Verify Your Applicant's Right to Work in the US

Detailed immigration information is beyond the scope of this article, however, before your new hire starts his or her job, you are obligated to verify their eligibility

to work in the US. No later than the first day of work, you must give the employee the US Citizenship and Immigration Services (USCIS) Form I-9, Employment Eligibility Verification, available at <https://www.uscis.gov/i-9>. The Form has detailed instructions on how to complete the employee section and the employer section. You will want to keep this completed and signed form in a confidential file in your home.

3. Consider a Background Check on Your New Hire

A background check will verify that your new hire does not have a recent criminal record or child abuse history. There are many companies that can advise you on these options and, for a fee, provide you with all the forms you need for the company to conduct a legally permissible background check for you. One provider I have used is <https://www.scherzer.com/>.

4. Obtain Employer Identification Numbers

In California, employers must report all of their new or rehired employees to the New Employee Registry within 20 days of their start-of-work date, which is the first day of work. To register with the EDD, you may use this website https://edd.ca.gov/Payroll_Taxes/e-Services_for_Business.htm

You will also need a federal Employer Identification Number or EIN. You can apply for this number online on the IRS website.

5. Determine How You Would Like to Handle Taxes and Withholdings – Which Benefit Your Employee

When you withhold Social Security and Medicare taxes from your employee's pay, you are establishing a safety net for that person that they may never have known before. The Social Security tax pays for old-age, survivors, and disability benefits for workers and their families. The Medicare tax pays for hospital insurance. If you pay cash wages of \$2,200 or more for 2020 you must pay taxes to the IRS, and this limit changes annually. Your share is 7.65% (6.2% for Social Security tax and 1.45% for Medicare tax) of the employee's Social Security and Medicare wages. You must withhold the same percentages from your employee's wages for each pay period, or you can choose to pay that for the employee.

In California, you are obligated to pay two types of taxes on your employee's wages: unemployment insurance and employment training tax. The employee pays a tax for state disability insurance that the employer must withhold. State disability taxes also provide the employee with paid family leave under certain circumstances.

Income taxes are handled in a similar manner, but you are not required to withhold federal income tax from wages you pay a household employee. Practically speaking, it is generally

easier for the employee to have their employer withhold income taxes from their wages via a Form W-4. Have no fear - there are many payroll service providers available to assist household employers with these tasks that are well worth their cost to avoid the work that goes into proper tax treatment of your employee.

6. Obtain an Employment Agreement

A well thought out at-will employment agreement is a great way to start off your household employment relationship with clear terms and expectations. Such an agreement should include hours, pay rate, expectations, confidentiality and prohibitions. Although optional, holidays, paid vacation, paid sick days, and any other perks are always appreciated and best understood when set out in advance.

7. Keep Records

It is recommended that you keep a daily log of the employee's hours. This can be as simple as a 12-month calendar with the hours or wages written in daily. Keep all tax documents and filings, including daily wage reports, for four years after the tax return filing date.

What are the consequences for paying your nanny under the table? Failure to pay taxes on your household employee may subject you to back taxes, penalties and interest. The most common ways that the state or federal tax authorities learn that you employed a household employee is when that employee files for unemployment or for disability benefits.

In summary, if you do not pay taxes or collect withholdings on your employee's wages, you are opening yourself to messy and costly probes from tax authorities down the road. Perhaps more troubling, however, you may find yourself facing an injured or aged employee who can no longer provide you with the services you require, and who has no government benefits for future support.

In light of California's interest in following up on AB5 violations, all residents would be advised to review their household worker arrangements for compliance.

I would be happy to discuss your questions.

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