



HIRING MARY OR MARTY POPPINS AS CAREGIVERS CONSIDERATIONS WHEN EMPLOYING CAREGIVERS

Important Questions When Considering Hiring Caregivers

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All Workers Have Rights on The Job.



In California, workers are protected by labor laws. It does not matter where they were born or what their legal status is. Once you hire someone, they have rights.

IN-HOME CARE IS ON THE RISE

- ▶ According to estimates by the U.S. Department of Health and Human Services and the Administration on Aging, 7 out of 10 people over age 65 will require long-term care in their lifetime, and 1 in 5 will need that level of care for more than 5 years. This statistic is one of the key reasons that some people opt to consider at home care.
- ▶ Many people choose in-home care because they enjoy the freedom of being in their own home in familiar surroundings. Many seniors report having a greater quality of life and happiness with in-home care, and statistics show that these beneficiaries actually have up to 50% fewer doctor's visits annually. When considering in-home care, families need to decide what's right for them.



Hiring an Employee vs. an Independent Contractor: What is the risk?

- ▶ When the decision has been made to hire in-home caregivers, it is important to understand the repercussions of designating the worker as an employee vs hiring an independent contractor.
- ▶ In hiring an employee, you are taking the responsibilities of being an employer, whereas in hiring an independent contractor, the family employing the in-home care worker must demonstrate the worker's true independence (i.e. the worker must maintain an independent business enterprise, including a workspace, outside the employer's domain, with his/her own tax I.D. (and, preferably, own insurance). Be aware that incorrectly designating a caregiver as an independent contractor instead of an employee can come with serious consequences. Even Home Health companies sometimes get it wrong – it is difficult for individual families to get it correct.
- ▶ Most in-home caregivers who are paid by the household or a third-party payment processor on behalf of the household, are employees, not independent contractors. According to the IRS, if a privately hired/independent caregiver is paid more than \$2,100 per year, they are considered a household employee, not an independent contractor. Besides the CDOL, the IRS has also instituted new processes for finding and penalizing employers who improperly classify a worker as an independent contractor when they are really an employee.



DEPARTMENT OF LABOR ENFORCEMENT

- ▶ In the last few years, the California Department of Labor (“CDOL”) began focusing on in-home caregivers and bringing suits against the employer, whether the family or the Home Health Care Placement Agency. One agency was just fined by the CDOL \$2+ Million for misclassifying workers as independent contractors, instead of employees.
- ▶ After the citation, the workers of the home care company then filed a civil action for money, alleging other wage & hour employment claims and demanding over \$7+ million for ‘wage theft’ and penalties for things like:
 - Over Time
 - Sleep Time
- ▶ For example, a caregiver covered under the Domestic Worker Bill of Rights (“DWBR”), working 24 hours a day, five days a week, at a daily rate of \$270 a day, likely has an unpaid overtime claim of \$3,375 per week. That is over \$175,000 a year in unpaid overtime. In addition, add to the claim liquidated damages, penalties, interest and attorneys fees under the law, which can add up to over \$500,000+ for just a couple of years of caregiver work and early settlement (before the attorneys fees skyrocket).

Domestic Workers and Personal Attendants Bill of Rights

Summary table: overtime for domestic workers:

IF YOU ARE...	THEN YOU ARE ENTITLED TO...		UNDER THIS LAW...
	Overtime (1.5 x regular rate of pay)	Double time (2 x regular rate of pay)	
A personal attendant employed in a private household	> 9 hours/day or > 45 hours/week	n/a	<u>Domestic Worker Bill of Rights</u> (Labor Code sections 1450–1454)
Other type of domestic worker (not a personal attendant)			
Not live-in	> 8 hours/day or > 40 hours/week	> 12 hours/day or > 8 hours on the 7th consecutive day of work	<u>Wage Order No. 15</u> (normal overtime requirements)
Live-in	> 9 hours/day or Up to 9 hours worked on the 6th or 7th day of the week	> 9 hours on the 6th or 7th day of the week	<u>Wage Order No. 15</u> (special overtime requirements)

Domestic Workers and Personal Attendants

Bill of Rights

► Who is a domestic worker under the Domestic Worker Bill of Rights?

A domestic worker provides services related to the care of people in the home or maintains private households or their premises. Domestic workers include nannies, childcare providers, caregivers and personal attendants, housekeepers, cooks, and other household workers.

► Who is a personal attendant under this law?

A personal attendant is someone employed by a private householder or any third-party employer recognized in the health care industry to work in a private household. Duties of a personal attendant include supervising, feeding, and dressing a child or person who needs assistance due to advanced age, physical disability, or mental deficiency.

If a domestic worker spends more than 20 percent of his or her time performing work other than supervising, feeding, and dressing a child or person who needs supervision, he or she is not considered a personal attendant. Domestic workers who are NOT personal attendants are entitled to overtime under Wage Order No. 15

Personal Attendant Duties	Non-Attendant Duties
Feeding	Making Beds
Bathing	Housecleaning
Dressing	Cooking and Laundry
Direct Supervision of any person under care	Other duties related to the maintenance of a private household or premises.



Who is the Employer?

- ▶ The domestic Worker Bill of Rights defines “domestic work employer” as any person, including corporate officers and executives, who directly or through an agent (such as temp services, staffing agencies) employs or controls wages, hours, and working conditions. Signing the paychecks or approving the hours of a worker is an indicia of being an employer.
- ▶ Employers can have personal liability for unpaid wages.

Liabilities of Employers:

The Labor Commissioner enforces the California Minimum wage, and they may also enforce a higher local minimum wage if the work is performed in a city and /or county that has a higher minimum wage ordinance.

Wage Order No. 15 allows meal and lodging credits against the minimum wage, if the employer and the employee enter into a voluntary WRITTEN agreement (before the work is performed) and the employer abides by the limits specified in Wage Order No. 15.

Remember the law protects workers who assert their legal rights or file a claim with the state if their employer violates their rights. It is illegal for an employer to fire an employee or punish them for taking these actions. A retaliation claim can add to sums due for wage and hour claims.



Labor Laws and Hiring Liabilities, Are You Prepared?

California household employers are someone who has paid \$750 or more in cash wages to one or more household workers in a calendar quarter. These wages may be in the form of cash, check, or the reasonable cash value of noncash payments, such as meals and lodging. Once you meet the \$750 in cash wage threshold, you must include as subject wages all cash and noncash payments, such as the value of meals and lodging.

- Employment development Department (EDD): Generally, you must register with the (EDD) within 15 days after you have paid \$750 in cash or checks;
- State Disability Insurance (SDI): If a “household employer” pays cash wages of \$750-\$999.99, they are responsible for reporting wages for purpose of State Disability Insurance. The SDI taxes are deducted from employees’ wages and remitted by the employer to the EDD;
- Unemployment Insurance (UI) and Employment Training Taxes (ETT): If a “household employer” pays cash wages of more than \$1,000, they are responsible for not only SDI taxes, but also Unemployment Insurance and Employment Training Taxes;
- Workers Compensation Insurance is required for any domestic worker employed 52 or more hours, or who earned \$100 or more, during 90 calendar days immediately preceding the date of an injury or last exposure to the hazard of an occupational disease. The provision does exclude workers employed by a parent, spouse, or child;
- Federal Unemployment Tax (FUTA): If you paid cash wages to household employees totaling more than \$1,000 in any calendar quarter during the calendar year or the prior year, you generally must pay federal unemployment tax (FUTA) tax on the first \$7,000 of cash wages you pay to each household employee;

Labor Laws and Hiring Liabilities, Are You Prepared?

- Social Security (FICA): Employers must pay social security contributions and withhold employee's social security contribution;
- Federal Unemployment Tax (FUTA): If you paid cash wages to household employees totaling more than \$1,000 in any calendar quarter during the calendar year or the prior year, you generally must pay federal unemployment tax (FUTA) tax on the first \$7,000 of cash wages you pay to each household employee;
- Reporting Requirements: Employers are required to submit tax returns and wage reports;
- Employment Eligibility Verification form (I9) employers must comply with the states verification system;
- Pay Stub Requirement: California law requires employers to provide employees with a pay stub each payday. It should include the employee's hourly rate, hours worked in the pay period, gross wages, all deductions taken, and net pay;
- Federal Statutes: Employers must comply with state and federal statutes governing the wages, hours, and working conditions of employees;
- Paid Sick Leave: Household employers in California are required to provide up to 24 hours of paid sick time each year to their employees. However, employers do not need to pay their employee's unused sick time;
- Termination Notice: Household employers in California are required to provide a change in relationship notice to their employee at the time they are fired or laid off;
- Managing unused PTO: If California household employers off PTO, unused vacation time must be paid out.

Hiring Direct Health Care Providers vs. Hiring Agency Health Care Providers: What's the Pros and Cons?

- ▶ You and your family had hoped this day would never come: You need a caregiver for a loved one. You realize that they might no longer be able to care for themselves and they'll need help from a caregiver. What do you do? You have two options: Find a licensed caregiver through a licensed Home Care Agency, or directly hire a Private Caregiver who provides services independently.
- ▶ Choosing a home care provider for yourself or your loved one can be a stressful process. You want to be sure you'll be provided with reliable, quality care from a reputable provider without completely breaking the bank. Conducting thorough interviews with all providers under consideration is an important step to choosing the best provider for your needs.
- ▶ Choosing a provider for your loved one is an important decision, and you'll want to be sure that you've weighed the pros and cons of both options before deciding. Before you choose whether to use a Private Caregiver or a Home Care Agency, learn a little more about the differences between the two. There are pros and cons to each approach.

Private Care

Pros of Private Care	Cons of Private Care
<ul style="list-style-type: none">• Lower Cost: You can negotiate a lower salary for the caregiver and determine how much you'll pay as well as the terms of payment;• Personal Selection: When searching for a private caretaker, you have full control of the entire selection process;• One-on-One Relationship: It's possible to develop a stronger and long-lasting relationship;• Flexible Work Hours: You pick and choose the hours you may need, so you are not stuck paying for care you do not need;• Freedom in the duties Performed: Private caregivers can perform certain tasks in your household, unlike agencies where the state restricts the duties they give to their workers.• In House Supportive Services (IHSS): If you qualify the IHSS Program will help pay for services provided to you so that you can remain safely in your own home;	<ul style="list-style-type: none">• Hidden Expenses: You must treat your caregiver as an employee, so you need to manage payroll logistics, comply with IRS regulations, and pay various taxes;• Hiring Is Time Consuming: No matter how well you search and how many referrals you get, finding a reliable and experienced private caregiver is an exceedingly difficult process.• Private Professionals Are Scarce: Non-medical caregivers can be difficult to find;• Responsibility for Liabilities: You must bear the cost of all work-related injuries and accidents. This means you need to pay for liability insurance;• Backup Plans Are Needed: Caregivers work hard, and they could get sick or need rest at various times. You must have a backup plan;• Loss of Wages: Don't forget to factor in lost wages if you plan to take on the caregiver role yourself;• Legal Matters: It can be costly if a Caregiver files a lawsuit with claims they suffered harassment, sexual abuse, financial abuse, or they suffered an injury on the job.

Agency Care

Pros of Agency Care	Cons of Agency Care
<ul style="list-style-type: none">• Large Pool of Caregivers: Agencies recruit and hire several types of professional and non-professional caregivers, so there's a constant supply of experienced caregivers to take care of your elderly loved one;• Background Checks: Agencies know the important characteristics of caregivers. They can take the responsibility for medical examinations, drug screening, background checks and verification of licenses and qualifications so you can receive a caregiver into your home with peace of mind;• Minimal Paperwork: You don't need to get bogged down with endless documentation and filing of employment and tax papers;• Liability Reduction: Agencies insure all their caregivers, so you don't need to pay for liability insurance to cover damages, injury, or theft;• No Need for Contingency Plans: If a caregiver falls sick, another person will be available to replace or stand in for your loved ones.• Legal Matters: Agencies handle instances of misconduct and report it to the proper authorities.	<ul style="list-style-type: none">• Higher Cost: The cost of hiring a caregiver through an agency may be higher than the lower fees charged by independent caregivers;• Schedules Are Defined: Caregivers working for an agency often set their own hours, and sometimes they may not align with what you need. Moreover, the caregiver's loyalty may not be to the family but to the agency;• Limited Input: Using an agency, as opposed to hiring a caregiver directly, removes you from some of the burden of the hiring process, but also limits your ability to determine if the caregiver is a good match for your family;• Employee Turnover: Frequent changes by the agency in the caregivers you are sent can cause stress for families, especially those whose loved one's experience Dementia or Alzheimer's;• Language Barrier: Agencies may not have a caregiver who speaks a second language, shares interests with your relative or has personality traits your loved one will appreciate.

**Thank You for
Your Time**

Any Questions?



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