



Navigating the Risks of Household Employment

Best Practices to Protect Your Time, Assets, and Reputation





INTRODUCTION

01

AN EMPLOYER'S RESPONSIBILITIES AND RISKS

Taking on the role of a direct household employer can be complicated – even for households with a single employee. Employers are responsible for a sizable burden, including payroll and administrative tasks, human resources responsibilities, and regulatory duties.

As an employer, you are legally and financially liable for compliant payroll reporting, proper employer and employee tax withholding, workers' compensation insurance, and a host of other responsibilities. Employment in the U.S. is a legal relationship governed by multiple regulations at the local, state, and federal levels and any ambiguities in the relationship or the terms of employment will be interpreted in favor of the employee. Thus, a single misstep, even for employers with the best of intentions, can trigger a cascade of fines and legal issues that could result in penalties in the five- to six-figure range or higher.

ADMINISTRATIVE BURDENS

- Payroll Processing
- Tax Withholding, Payments, & Reporting
- Forms 941, 940, W-2, I-9...
- Background Checks
- State & Federal Unemployment
- Mandated Disability Coverage
- Hiring Requirements
- Labor Law Compliance
- Mandated Benefits
- Paid Sick Leave
- Terminations
- Garnishments
- HR Management
- Minimum Wage & Overtime
- Timecards & Other Recordkeeping

EMPLOYMENT-RELATED RISKS

- Workers' Comp Insurance & Claims Management
- Employment Practices Liability
- Discrimination & Harassment
- Wrongful Termination
- General Liability
- Unpaid or Incorrect Wage Claims
- Cyber Security
- Privacy & HIPAA
- Automobile Claims
- Theft & Other Crime
- Child, Eldercare, & Caregiver Abuse
- Reputational Risk

EMPLOYER RESPONSIBILITIES

02

Many household employers feel the administrative component of compliant employment constitutes a near full-time job. Upon assuming this role, employers are accountable for every aspect of employment: the entire hiring process, tracking exact hours worked, processing payroll with proper deductions and taxes, acquiring and maintaining requisite insurance, managing issues with employees, maintaining correct and adequate records, providing the correct benefits and time off, and handling disciplinary issues and employment terminations.

Employers also need to stay current on ever-evolving federal, state, and local employment regulations, such as minimum wage requirements, mandatory paid sick leave, and wage replacement programs. If the time and effort required to be a compliant employer weren't already challenging enough, each task also brings added risk and potential liability exposure if not performed correctly.

When you make payments to a household employee – whether you have many employees or just one – there is an assumption of liability for the actions of (and interactions between) you and your workers. Informal handshake agreements and unrecorded, lump sum payments open the floodgates to potential wage and hour and other claims. It is critical that you protect yourself and your assets from these potential claims that can be time consuming, costly, and carry reputational consequences.



Taking on the direct employer role leaves you exposed to risk on a multitude of interconnected levels.



BEST PRACTICES

03

Limiting your exposure

The responsibility of being a direct household employer is inherently risky. Any decision to hire, fire, or otherwise manage performance can create unforeseen risk if not handled in a careful manner, as can seemingly straightforward considerations such as pay, scheduling, and time off.

Below are common examples of employer duties where individuals acting as direct household employers often find themselves in hot water. A misstep in any of these areas can leave you open to litigation and/or financial penalties for non-compliance.

Hiring due diligence

Whether hiring someone you already know to work or seeking someone new, it's critical to execute the same hiring steps for all potential employees. Assess all candidates thoroughly, including extensive criminal background screening and reference checks, and any position-dependent checks (such as driving record, credit history, or drug screenings).

In doing so, be mindful that some state and federal laws limit when and what types of background checks you can conduct.

To further protect yourself and your assets, it's a best practice to establish a formal interview process that is applied equally across all candidates. Additionally, generating a written job description, formalizing the employment offer details, and providing further information on employee classification, wage, time-off policy, length of employment, etc. can help avoid any future litigation.

According to 2021 Equal Employment Opportunity Commission (EEOC) data, more than 5,300 job candidates filed discrimination suits related to hiring processes.



BEST PRACTICES

03

Workplace governance

Whether you or another party, such as a household manager, will be the individual who frequently interacts with household staff, you are still legally responsible for monitoring and managing the employment relationship in the same way a human resources department at an established company would.

If an incident occurs or a dispute arises involving an employee, you have an obligation to respond to the situation, as you could ultimately be held liable. Although it's not a guarantee, a compliant employer can help to head off any potential harassment, discrimination, or wrongful termination claims by implementing thoroughly vetted and clear policies at the worksite.

Risk can be mitigated by publishing clear workplace policies addressing harassment, discrimination, and retaliation; establishing a formal process for dispute resolution; and thoroughly documenting all disciplinary incidents and termination proceedings.

Proper employment classification

One of the most common and avoidable mistakes is misclassifying a household employee as an independent contractor. Many people operate under the assumption that hiring a worker as a 1099 independent contractor will help avoid some of the hassle of employment. Unfortunately, it isn't that simple.

An individual's employment status – whether they are a W-2 employee or a 1099 independent contractor – is not up to the hiring entity or the worker to decide. The laws governing worker classification are set by various agencies, including the IRS, the Department of Labor, and multiple states that have chosen to enact stricter, more employee-friendly classification laws (such as CA and NJ). This is the case even if a worker has been misclassified at previous jobs, asks to be re-classified as a contractor, or signs a contract agreeing to be taxed as one.

The burden of proof that a worker is not an employee resides on the employer. You should be 100% confident that someone you hire as an independent contractor does not, in fact, classify as an employee.

BEST PRACTICES

03



The nature of the working relationship between the hiring individual and the worker determines the classification status. This is especially important as the issue of worker classification continues to capture national attention, and courts are proving to be increasingly employee-friendly when it comes to wage and hour claims or worker misclassification claims. Being on the receiving end of such a claim can carry severe financial and legal consequences.

When a household employee is laid off through no fault of his or her own, he or she may attempt to collect unemployment benefits. If the employer failed to establish an unemployment tax account and/or pay unemployment taxes, it could trigger an IRS investigation that could lead to significant penalties.

Additionally, improper employment classification for W-2 employees generates another set of potential regulatory and legal risks. Paying an employee a “flat rate” or salary, instead of classifying him or her as hourly and eligible for overtime wages, is a decision that can only be made based on the laws set forth in the federal Fair Labor Standards Act and applicable state laws, which specify whether the employee meets the criteria for exempt status. The employee cannot waive his or her right to these protections, even if he or she believes it’s simpler to be paid a per diem and avoid filling out timesheets.

Although salary arrangements may be easier at first, they are in direct contradiction to federal and state wage and hour laws, and they leave you exposed to potential unpaid wage claims down the line. If an employee files a claim stating he or she was not paid for actual hours worked or correct overtime wages, failure to provide timesheets or payroll records leaves you little with which to defend yourself.

Payroll disbursement and tax withholding

A major potential pitfall for those acting as direct employers is the risk of mishandling payroll for a household employee. Lump sum and cash payments may be common, but they are in violation of IRS laws because neither the employee nor the employer are paying required taxes. As

the employer, you are required to withhold taxes from the employee’s wages. You are also accountable for paying employer payroll taxes, which include FICA (Social Security and Medicare) as well as state and federal unemployment taxes.



BEST PRACTICES

03

Securing mandated insurance coverage

Many people think any accident or injury incurred by a worker in the home would be covered under a homeowners' policy, but this may not be the case when the household is also a worksite. As a direct employer, 49 states (excluding Texas) require separate workers' compensation insurance. Employers found to lack workers' compensation insurance can be found criminally liable, not to mention on the hook for expensive accident and injury claims.

Even if not mandated, workers' compensation coverage is essential to protect you from assuming the full financial burden of a work-related incident. For instance, if a household employee injures his or her back while working, workers' compensation coverage would provide payments to the employee during the recovery period, and would also help with the costs of medical expenses and rehabilitation.

The employer's liability insurance portion of a workers' compensation plan would also cover legal defense costs should an employee accuse an employer of negligence or sue for additional damages. The insurance would help with the cost of hiring a lawyer, court fees, and paying a settlement or judgment.

Generally, workers' compensation insurance is also a bar to an employee suing in court before a jury for injuries sustained during the course of his/her work as an employee.

Most homeowners' insurance policies specifically exclude coverage for household employees and do not cover injuries that are deemed to have occurred as part of an employment relationship, but state laws differ regarding how workers' compensation insurance relates to workers in the home. It's important to read your policy and exclusions carefully before assuming employees are covered.



SUMMARY 04

To navigate the complex environment of household employment, it's important to be mindful of these common pitfalls to avoid the legal, financial, and reputational consequences associated with non-compliant employment.

Remember these best practices when considering paying household employees:

- Do your due diligence by assessing candidates thoroughly and equally
- Establish clear workplace policies
- Ensure your employees are properly classified
- Secure mandated insurance coverage

To learn more about the responsibilities and risks that household employers bear, as well as the most effective ways to mitigate liability and streamline the administrative burdens of household employment, you may want to consult a household employment specialist like TEAM.

TEAM Risk Management Strategies is the nation's leading provider of outsourced household employment services, offering an all-in-one payroll and HR solution to family offices, financial institutions, and wealth advisors whose clients have household employees. TEAM's white-glove solution allows clients the flexibility to select and manage the individuals working in their home, while fully outsourcing both the administrative hassles of timecards, payroll, taxes, and HR management as well as the considerable risk of being an employer.

Call us at **(619) 255-1733** or email **privatefamily@teamemployer.com** to see how TEAM can help with your employee administration hassles and employment-related liability

The contents of this document published by TEAM Risk Management Strategies, LLC ("TEAM") and any other information or publications referenced throughout this document are provided for informational purposes only for the benefit of the reader. While the data and information presented are believed to be accurate, TEAM makes no representation or warranty concerning the accuracy of such data and information. In no event shall the information contained in this document, or any other information provided herewith be construed as legal advice. No representations or warranties of any kind are intended or should be inferred with respect to the potential legal consequences in connection with the subject matter of any information provided by TEAM and all such representations or warranties are hereby expressly disclaimed. TEAM urges the reader to consult its own attorney as to legal matters in connection with the information contained herein.