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# Facts on Working Women

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## HIRING SOMEONE TO WORK IN YOUR HOME

### Definition of "employee"

Anyone who performs services is an employee if you, as an employer, can control **what is done and how it will be done**. This is so even if the right to control the work is not exercised. It also does not matter whether the person works full-time or part-time, permanently or on a temporary basis.

A household worker is an employee who performs domestic services in a private home, local college club, or local college fraternity or sorority chapter. Household workers include:

**babysitters, companions for the elderly or infirm, maids, caretakers, nurses, housekeepers, cooks, butlers, family chauffeurs, and maintenance personnel.**

Babysitting that is performed in the caretaker's home does not establish an employer-employee relationship, because the caretaker controls when and how the work is performed. Also, independent contractors, self-employed persons and representatives of an agency or au pair program who work in or around the home are not employees.

To determine whether an individual is an employee, file Form SS-8, Determination of Employee Work Status for Purposes of Federal Employment Taxes and Income Tax Withholding, with the local Internal Revenue Service (IRS). In addition, IRS Publication 15, Circular E, Employers Tax Guide, and Publication 937, Employment Taxes and Information Returns, provide guidelines for determining whether an employer-employee relationship exists.

### Initial Steps When Hiring

One of the first steps to take when hiring a new employee is to establish the employee's identity and employment eligibility. This can be done by having the employee complete the Employment Eligibility Verification Form, Form I-9, at the time of hire. The employee must present documents from those listed on the form as acceptable to establish identity and employment eligibility. The employer must review these documents and **attest** that these documents appear to be genuine and relate to the individual being hired. The employer retains the Form I-9 and must present it, if requested, to officers of the Immigration and Naturalization Service (INS), the Department of Labor, or the Office of Special Counsel for Immigration-Related Unfair Employment Practices. Form I-9 can be found in the Handbook for Employers (M-274) available in limited quantities from the local office of the INS. In addition to containing the Form I-9, the Handbook answers many commonly asked questions regarding the employment verification procedures.

In addition, an employee who does not have a Social Security number (SSN) can get one by completing Form SS-5, Application for a Social Security Card. This form can be obtained at local offices of the Social Security Administration or by calling 1-800-SSA-1213.

The employer's identification number (EIN) is issued by the Internal Revenue Service. The EIN is used to complete quarterly and annual employer's tax forms. An employer can apply for an EIN by completing Form SS-4, Application for Employer Identification Number. The form can be ordered by calling 1-800-TAXFORM. If the employer's tax forms are being filed for the first time and the employer has not applied for an EIN, the employer should write "NONE" in the space provided for the EIN. The Internal Revenue Service will then assign an EIN.

## **Federal and State Laws Related to Domestic Worker's Wages**

### **Minimum Wage and Overtime Pay**

Under the Fair Labor Standards Act (FLSA) domestic workers are entitled to minimum wages and overtime pay. However, casual babysitters and companions for the elderly and infirm are exempt from coverage. The 1993 Federal minimum wage is \$4.25 an hour. Some States' minimum wage rates are higher than the Federal rate. The Federal law permits certain benefits, such as meals and lodging, to be counted as a part of wages. However, meals and lodging are not subject to social security and Medicare taxes if they are furnished for the employer's convenience, on the employer's premises, and as a condition of employment.

Domestic workers are also entitled to 1 1/2 times their regular rate of pay for hours in excess of 40 a week unless the employee resides in the household where employed. The Federal law does not require premium pay for weekends, holiday work or daily overtime; nor does it require rest periods, discharge notices, or severance pay. Also, FLSA does not limit the number of hours an employee may be required or scheduled to work, if the employee is age 16 or older. More detailed information about FLSA can be obtained from the Wage and Hour Division of the Employment Standards Administration, U.S. Department of Labor. The address and phone number can be found under the Federal government section of the local telephone directory.

### **Federal and State Income Tax Withholdings**

Income tax withholdings lessen the employee's burden of having to pay a lump sum tax at the end of the year. Employers are not required to withhold income tax on wages paid to a private household employee. However, if the household employee requests withholding payments and the employer agrees, the employer should give the employee the appropriate State and Federal withholding forms to complete. Form W-4, Employee's Withholding Allowance Certificate is the Federal form. IRS Publication 15, Circular E, Employer's Tax Guide, contains withholding tables for computing the amount of Federal withholdings. Employers can obtain a booklet containing the State income tax withholding tables from a State tax office.

## **Federal Insurance Contribution Act (FICA)**

The Federal Insurance Contribution Act (FICA) finances a Federal system of old age, survivors, disability, and hospital insurance that is generally referred to as social security and Medicare. Employers are required to withhold and pay social security and Medicare taxes for a private household employee, if \$50 or more in cash wages are paid during a calendar quarter. The law does not apply to a worker who is a spouse, a child under age 21 or a parent working in the home. There are exceptions to a parent working in the home which can be found in the instructions for filing Form 942.

The 1993 FICA tax is 15.30 percent (an equal contribution of 7.65 percent from the employer and employee), which is remitted to the Internal Revenue Service on a quarterly basis, using Form 942, the Employer's Quarterly Federal Tax Return for Household Workers. More detailed information about FICA withholdings can be found in IRS Publication 926, Employment Taxes for Household Employers. Employers can voluntarily pay their employees' portion of FICA taxes and report the amount as a part of wages.

## **Federal and State Unemployment Taxes**

The unemployment insurance program provides some income protection to domestic workers who have lost their jobs. The program is operated jointly by the Federal and State governments, with the State establishing standards for the payment of benefits. Under the Federal Unemployment Tax Act (FUTA) employers are required to make quarterly tax payments on domestic wages of \$1,000 or more during a calendar quarter for the current or previous year. State requirements differ from State to State; however, in most cases, an employer must also pay a State unemployment tax. Usually, the employer receives a credit for the State Unemployment Tax when filing the Federal Unemployment Tax. In jurisdictions where employers are not required by law to participate in a program, they may do so voluntarily.

## **State Workers' Compensation**

Workers' compensation programs provide income and medical benefits to employees (and their survivors) when a work-related injury or death occurs. In many States (and in the District of Columbia and Puerto Rico) domestic workers are covered by workers' compensation. Coverage, however, will differ from State to State based on the number of employees to be covered, the amount of wages paid, or the number of hours worked. In States where there is no mandatory coverage, employers are permitted to provide voluntary coverage, except in Louisiana, Missouri, Virginia and Wyoming.

## **Earned Income Credit (EIC)**

The EIC is a cash refundable Federal tax credit that can be collected in advance or at the end of the tax year. It is available to low-income working families with children under age 19 (or 24, if in school full-time). EIC is also available if the employee's child is permanently and totally disabled, regardless of age.

Form W-5, Earned Income Credit Advance Payment Certificate, must be completed if the employee requests the EIC during the year. An employer can also approach the employee about completing the Form W-5. Notice 797, "Notice of a Possible Federal Tax Refund Due to the Earned Income Credit", explains the employee's right to request the EIC in advance.

## **Other Important Tax Forms**

An employer must furnish copies of Form W-2, Wage and Tax Statement, to an employee from whom income, social security, or Medicare taxes have been withheld or an Earned Income Credit has been paid in advance. If an employer has more than one Form W-2 to file, the information must be summarized on the Form W-3, Transmittal of Income and Tax Information.

Copies of Form W-2 must be furnished to employees shortly after December 31, but no later than January 31 of the following year. Form W-2 is processed by the Social Security Administration to update employees' earnings records. The Social Security Administration provides IRS with the income tax data it needs from the Form W-2.

Form 941, Employer Quarterly Federal Tax Return, can be used instead of Form 942, if an employer has both domestic and other types of employees.

Below is a list of Federal publications and tax forms to assist employers of household workers. They can also be ordered by calling the toll-free telephone numbers for the IRS or Social Security Administration, 1-800-TAXFORM and 1-800-SSA-1213, respectively. For copies of State publications and tax forms, contact State local tax offices. Failure to comply with Federal and State wage and tax laws can result in civil monetary penalties.

### **Publications**

IRS Publication 15, Circular E, Employer's Tax Guide

IRS Publication 926, Employment Taxes for Household Employers

IRS Publication 937, Employment Taxes and Information Returns

IRS Notice 797, Notice of a Possible Federal Tax Refund Due to the Earned Income Credit

### **Forms (and instructions)**

SS-4 Application for Employer Identification Number

SS-5 Application for a Social Security Card

SS-8 Determination of an Employee Work Status for Purposes of Federal Unemployment Taxes and Income Tax Withholding

I-9 Employment Eligibility Verification Form

W-2 Wage and Tax Statement

W-3 Transmittal of Income and Tax Statement

W-4 Employer's Withholding Allowance Certificate

W-5 Earned Income Credit Advance Payment Certificate

940 Employer's Annual Federal Unemployment (FUTA) Tax Return

940-EZ Employer's Annual Federal Unemployment (FUTA) Tax Return

942 Employer's Quarterly Tax Return for Household Employees

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