

Hiring Caregivers: Legal and Financial Considerations

by

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Introduction

“There’s no place like home.” That time-honored adage summarizes the motivations of people who want their children cared for at home as well as people who want to face advancing age, illness or infirmity in familiar surroundings. In either circumstance, in-home help may be necessary.

These materials provide guidelines for those who are hiring or considering in-home care. Each situation is unique. Accordingly, **it is very important for you to check with a knowledgeable professional to clarify what is necessary for you in your particular circumstance. The information contained in this guide is not a substitute for legal advice.**

Even if you do not need the resources in this guide immediately, please keep it in an accessible location in your home or work-area. You are welcome to share the information with friends and family who might benefit from the resources.

If you would like assistance with drafting the appropriate forms for hiring caregivers, please contact Christine Long (christine.long@berliner.com) at Berliner Cohen, LLP.

Finding a Caregiver

Home Care Registry

Various community organizations maintain registries of recommended caregivers who may have been interviewed and screened. Ask the registry what screening process is used. Registries generally help you assess your needs over the phone or in person. They will then refer caregivers to you for interview. You are responsible for interviewing, hiring, and managing your employee. In 2014, the average hourly rate for privately-hired home care was \$14.99 per hour (and up). Registries can also help you find live-in help, charged at a weekly or monthly rate, which varies according to the amount and type of care required.

Home Care Agencies

Home care agencies generally specialize in elder care. The home care agency will not only provide, but also oversee caregivers. In the case of elder care, many caregiver's have training as nurse's assistants. The agency selects a caregiver for you; however, you may ask for a different person if you are unsatisfied with their choice. The agency is the caregiver's direct employer and handles payroll and taxes. As of 2014, agencies generally charge from \$16.00 to \$22.00 per hour (and up) depending upon the skill-level of the caregiver; in some cases, travel time may be added. Reimbursement may be available through an insurance company.

Job Placement Services

Job placement services vary greatly in the level of screening, and provide no oversight. Such services include the following: Craigslist, community bulletin boards, nanny websites, caregiver websites, senior center bulletin boards, college career centers, churches, synagogues, employment agencies, classified ads and the internet. Be aware that people listed through these sources are not always qualified or screened. Even if someone is purportedly "pre-screened," you should conduct your own interview and screening.

Geriatric Care/Case Manager

If you are responsible for the care of a senior or dependent adult but are unable to manage and supervise his/her home care due to time constraints or distance, you may want to consider hiring a care/case manager. A Geriatric Care/Case Manager is a professional who assists the individual and his/her family in keeping the individual in his or her own environment - healthy and independent as long as possible.

The care/case manager is trained and experienced in assessment, coordination, monitoring, and direct delivery of services. As a professional, the person has a clinical or graduate degree in social work, psychology, or one of many health care fields, including, but not limited to, nursing, occupational therapy, and physical therapy.

Interview (by phone or in person) more than one care/case manager before making a choice. Fees may range from \$100/hour to \$250/hour. As geriatric care/case managers are not licensed or overseen by a regulatory agency, make sure you know the qualifications of the person you hire to perform this function. To find care/case managers in your area, refer to the **Senior Resource Guide**, "*Care Management*", or go to www.caremanager.org (the website for the Aging Lifecare Association, the association for Geriatric Care Managers).

The Telephone Interview

Interviewing applicants for your home care job is a very important next step in finding the right person. If you are hiring independently (i.e., not through a home care agency), you will want to pre-screen most applicants over the telephone to determine whether it appears to be worthwhile, both for you and the applicants, to schedule a longer, in-person interview.

Here are some tips on phone interviewing:

- ◆ Give applicants a brief description of the duties and the days and hours your job will involve.
- ◆ Ask whether they have experience with each of the duties you have described.
- ◆ Notice whether the applicant provides a specific, thorough description of previous experiences, rather than vague or general statements.
- ◆ Ask specifically what kind of schedule the applicant is seeking.
- ◆ Listen for a pleasant tone of voice and attitude on the phone.

If an applicant does not impress you on the telephone, do not give out your address. Instead, state that you have several interviews to complete, ask for a name and a phone number where you can get back to the applicant, and thank them for their time. Do not be coerced into hiring someone if you are not comfortable.

If you feel an applicant is suitable, schedule a day and time for an in-person interview in a public location (if at all possible). Schedule personal interviews only with the people you feel good about and would really like to meet.

- ◆ Plan to have someone whose judgment you trust with you for the interview.
- ◆ Tell the applicant to bring a state-issued valid photo ID with him or her to the interview.
- ◆ Tell the applicant to bring a copy of any criminal conviction history within the past seven years and if driving is a required part of the job, a DMV printout.

NOTE: In California, you may use an outside screening agency to conduct the investigation upon obtaining the written consent of the employee and if you do so you must: provide the applicant advance written notification describing the nature of the investigation and a summary of the applicant's rights under the Federal Fair Credit Reporting Act ("FCRA) state the purpose of the report; give the name, address, and telephone number of the screening company; and include a box for the applicant to check to indicate he/she wants a copy of any report.

If you do the background check yourself, i.e. by asking for records or conducting a public record search for criminal convictions, you are not required to use the same notice rights as stated above. However, you should be cautious to limit your questions to convictions within the past seven years and avoid asking questions in the other categories outlined on page 8 regarding "Criminal History Checks." You must also allow the applicant/employee an opportunity to see a copy of whatever reports you obtain. The one exception to this rule is if the applicant is now employed, and you suspect misconduct, you can obtain the reports without providing notice of their right to obtain a copy.

Developing a Schedule

As you prepare to interview someone to assist you, review your lifestyle and schedule.

- ◆ Are you a morning person? What time do you get up?
- ◆ What things do you feel are essential to start a day?
- ◆ Which activities need to be done on a daily basis?
- ◆ Which activities must be scheduled routinely throughout the week/month?
- ◆ Which activities can be done on an as-needed basis?
- ◆ Can some tasks be “set up” for you to complete after your caregiver has left?

You may prefer a very structured schedule or one that is more flexible. Most employers find the consistency of a steady schedule works best (i.e., every day from 10:00 AM to 2:00 PM). You may occasionally need to change the schedule. In these cases, both parties should respect the time constraints of the other. Caregivers often have other jobs that may need to be shifted if their schedule with you is changed.

As the employer, you determine the work schedule; however, giving the applicant some input might increase the likelihood that he or she will be a good fit.

The Personal Interview

If possible, conduct the first personal interview in a public place at a time convenient for both you and the applicant. Plan to have someone whose judgment you trust with you for the personal interview -- a neighbor, friend, or relative. Ask the applicant for a photo ID and ask him or her to fill out a job application at the beginning of the interview. Request that he or she include a list of references including names and phone numbers. Even if the applicant has letters of recommendation, ask him or her for references whom you can speak to personally.

Start the interview with a full discussion of your needs, lifestyle, and schedule. It is helpful to the prospective employee to understand exactly what you are looking for and their anticipated work schedule. Be honest. Do not just say what you think the applicant wants to hear. If your needs are not clear up front, and you hire someone that does not fully understand your needs, you may both end up being miserable.

Try to ask open-ended questions which require more than a “yes” or “no” answer and which give you a feeling for the experience of the applicant. Examples of open-ended interview questions are:

- ◆ Please tell me about your current and past home care experience.
- ◆ Why are you interested in this particular job?
- ◆ What do you like best about home care? What do you find to be the most difficult part of working in home care?
- ◆ Is there anything about the job description that you are uncomfortable with?
- ◆ What would you do in an emergency? Give a realistic example.
- ◆ What kind of salary and benefits are you looking for?
- ◆ What kind of commitment are you willing to make to this job?

Interviewing

- ◆ Tell me about a time when you had to calm an upset client. How did you handle the situation?
- ◆ Describe a time a client insulted you. How did you handle it?
- ◆ Describe an experience when you disagreed with your employer's request.

Only after you have verified the information and performed a background check should you invite the applicant to your home.

Please remember, do not talk too much. It is important that you hear the caregiver speak and answer questions. Often times, if you talk too much, you do not have an opportunity to see how the caregiver articulates answers, interacts with you or comprehends what you are asking.

Background & Reference Checks

Criminal History Check

Under state law, an individual may request a copy of his or her own criminal history record from the California Department of Justice. Penal Code 11105 restricts access to this information to the person who is the subject of the report, and to law enforcement and court officers who are acting in their official capacity.

You may ask a prospective employee to provide you with his or her criminal conviction history within the past seven years, but you cannot require them to do this. Employers in California can NOT inquire about: (1) most arrests that did not involve convictions; (2) convictions that have been expunged, sealed, or statutorily eradicated; (3) convictions in which the applicant was referred to or participated in any pre- or post-trial diversion program; (4) misdemeanors for which probation has been successfully completed or otherwise discharged, and the case has been judicially dismissed; and (5) marijuana convictions that are more than two years old. All employers should review their applications to make sure they are not requesting criminal history information within these 5 categories.

Note: Employers in San Francisco with 20 or more employees are prohibited from asking about an applicant's criminal history on a job application, including "checking the box" to indicate criminal convictions or other criminal justice system involvement. It also prohibits covered employers from asking about criminal history during an initial interview. Background checks cannot be performed until after the first live interview or after a conditional job offer is made. The employer must provide the applicant with a written notice before making any inquiry into the applicant's criminal history. Employers who fall into this category should make sure their applications do not ask these questions.

Keep in mind that if someone has something to hide, he may not provide you with his actual criminal history. Make sure that you see an official document that shows criminal history or a statement that says "no criminal history." Also, be careful that an official looking piece of paper is not substituted in place of the real thing.

Contact your local law enforcement for additional information.

Department of Motor Vehicles (DMV Printout)

Prospective employees, who will be expected to drive as part of the job duties, should also provide a Department of Motor Vehicles record. This will allow you to know if the applicant has a valid driver's license, if there are restrictions on the license, and what types of actions have been associated with the person's driving. Once again, make sure that this is an actual copy from the DMV.

Public Information

You are allowed to research local public information regarding your potential caregiver. Public information includes:

- ◆ Misdemeanor and Felony Crime Convictions
- ◆ Small Claims Suits

Background & Reference Checks

- ◆ Civil cases
- ◆ Family Law cases
- ◆ Bankruptcy cases

Background & Reference Checks

Credit Reports

While a credit report can also assist you in assessing a person's level of responsibility and trustworthiness, employers should avoid using consumer credit reports for hiring and personnel decisions because consumer credit reports often include criminal histories. Under the California Investigative Consumer Reporting Agencies Act (ICRAA), an employer is permitted to use consumer credit reports only if the individual is applying for or works in certain positions, none of which apply to a potential caregiver. [Labor Code section 1024.5]

Reference Checks

References should be provided by anyone applying for a job, even if letters of recommendation are provided. All references on the employment application should be checked. Talk with the references on the telephone. Remember that you are a potential employer, and that you want the best person possible in your home or in the home of someone you care about. Do not be shy about asking questions. Always ask if this person would be eligible for re-employment with the reference. If the answer is "no," use caution. This is a red flag that the previous employer was unsatisfied with the person, and would not want them back. Again, make sure you speak to the listed references; do not rely on letters of recommendation alone.

Contract for Employment

Tips on Contracts

A contract is a written agreement between the employer and the employee. A written agreement helps to insure that everyone understands the terms of the work arrangement. Difficulties can often be resolved more easily when there has been a written contract at the beginning of the relationship.

The following guidelines are general and your particular situation may require additional information. At a minimum, you should consult with an attorney and a certified public accountant for specific information pertaining to labor laws, taxes, payroll, and insurance. **This list is for educational and illustrative purposes only.**

Items to include:

- Name of employer
- Name of “household employee”
- Wages and benefits (include meals, mileage, etc.)
- When and how payment will be made
- Days and hours of work
- Employee’s Social Security Number and driver’s license number (if you are hiring independently)
- Duties to be performed
- Unacceptable behaviors (such as smoking, drinking, abusive language, etc.)
- Consequences for unacceptable behaviors
- Sick leave, vacation and holidays (if applicable)
- Emergency absence plan (backup plan for your care, phone # of substitute met and approved by you)
- Termination guidelines (reasons for termination without notice, how much notice for no cause, etc.) Should state employee is at will.
- Dated signatures of employee and employer

If your employee is going to drive you or your children in his or her own car, you will want proof of insurance. If they will be driving your car, check with your insurance company to make sure you will be covered.

You should make sure any contract covers your agreement with your caregiver.

Management of Caregiver

Managing the Details

The following is a list of both practical concerns and issues of personal preference that home care consumers have found important to consider when hiring someone to work in their homes. In addition to thinking about your feelings on these specific points, remember the role that clear communication plays in all of your relationships.

Cultural Background

Be aware that if your caregiver is from a different cultural background he or she may have a different style of communication than you do. Cultures differ in what are considered acceptable behaviors such as what to talk about, how to ask personal questions and when it is appropriate to touch. Behavior that may appear rude to you may simply reflect cultural differences between you and your caregiver. Try to talk out any problems that arise from these differences. Also, try to anticipate any religious differences that may impact your or your employee's schedule, such as observing specific holidays.

Money

Most people find it helpful to make arrangements ahead of time for shopping and other activities that require cash. The caregiver should not be asked to use his or her own money during shopping trips; therefore, you should have money available for anticipated expenses. You should ask for receipts for all expenditures.

Never give your checkbook, bankcard, credit card, or any other instrument that can be used for financial transactions, besides cash, to your caregiver. Also, do not allow your caregiver to have anything to do with paying your bills. You may be increasing the possibility for a financially abusive situation, no matter how much you may trust them. Consider getting automatic payment of your bills.

Meals and Dietary Restrictions

It is important to give specific directions on how to prepare your meals, particularly in the beginning. Discuss your food likes and dislikes, and what time you like to eat your meals. If you have any dietary restrictions, make that clear from the beginning to avoid mistakes or problems.

Management of Caregiver

Transportation

You may want to discuss how to handle transportation costs. You are usually responsible for travel expenses incurred while the caregiver is on the job. Items for discussion can include travel to and from work, use of the caregiver's car on the job if required and the kind of insurance coverage they will need. Some insurance companies require additional insurance if you are transported in her car.

House Rules

Every home has its own unwritten rules about such things as smoking, TV and radio playing, telephone use, house temperature, acceptable eating areas, guests, etc. Talk with your caregiver about your house rules, especially if you are hiring a person to live in your house full-time.

Live In Caregivers

With live-in arrangements, both you and your caregiver need some privacy and time alone, along with accommodations for a place to sleep, eat, bathe, and relax. Live-in caregivers should have two days off per week and annual vacation time, just like people in other full-time jobs.

Safety Procedures

It is important to review safety procedures both inside and outside the home. For example, discuss how to correct potential hazards, especially in the bathroom and kitchen. Talk about home security: locking doors, key arrangements, and use of indoor and outdoor lighting. If possible, do not give your caregiver a key. If you have a disaster emergency plan, share it with your caregiver. If you do not, contact your local American Red Cross for information on how to prepare for an emergency. Provide names of people to call in case of an emergency.

Working Hours & Compensation

Working Hours and Hourly Work Restrictions

Almost everyone who holds a job in California has a wage order that governs how they must be paid, the hours they can work, and any restrictions on the duties they can be asked to do. The state minimum wage applies to all employees, including household workers. So, for every hour they work, they must be compensated at a rate of at least the state minimum wage or higher. The California minimum wage is \$9.00 per hour effective July 1, 2014. The minimum wage will increase to \$10.00 per hour effective January 1, 2016. Some cities, including San Jose, San Francisco, and Oakland, require a higher minimum wage. The applicable minimum wage will be based on the city where the employee performs services.

For household workers who do not live at their place of employment and are not “personal attendants” (see below for the definition of a personal attendant), overtime rules are the same as for any other employee. This means that they should be paid one and one-half times their regular rate of pay for working more than eight hours in a day or more than forty hours in a week. They also should be paid one and one-half times their regular rate for the first 8 hours on the 7th consecutive day and two times their regular rate for work over 12 hours in a day and for work of over 8 hours on the 7th consecutive day. On the other hand, there are special rules for live-in employees and personal attendants, as explained below.

If the caregiver is on duty for less than 24 consecutive hours, all of those hours must be paid even if they are permitted to sleep during those hours.

On the other hand, if they are on duty for 24 hours or longer, a regularly scheduled sleep period of up to eight hours may be uncompensated if they are given adequate sleeping facilities and receive at least five hours of uninterrupted sleep time. If they do not receive at least five consecutive hours of uninterrupted sleep (that does not mean they sleep, but that it was given to them) the entire sleep period must be compensated. Further, even if they receive at least five hours of uninterrupted sleep, they still must be compensated for any time that they have to work during the arranged sleep period.

In general, employers may require an employee to work any number of hours during a given week so long as they pay the employee appropriately, including overtime pay as described above. However, there are three limited exceptions.

- ◆ First, employees are entitled to one day of rest out of every seven days worked. This limited exception does not apply to employees who work fewer than 30 hours in a given week, emergencies, and work performed to protect life or property.
- ◆ Second, live-in employees cannot work more than 5 days per week except in an emergency. The employee can work in an emergency situation but must be paid overtime for that work.
- ◆ Third, personal attendants employed by nonprofit organizations may only work 40 hours per week and/or six days a week, except in emergencies. As with the previous exception, where the employee works in the case of an emergency, they must be paid overtime.

Live-In Employees

Working Hours & Compensation

Live-in employees may work a 12-hour shift in private households. They are generally entitled to 12 consecutive hours free of duty during each 24-hour workday. In addition, during the 12 consecutive hours of “work” time, the employee needs to be provided at least 3 hours of free time. The effect of this rule is that a live-in employee who works more than 9 consecutive hours in a day must be paid overtime (time and a half) for the hours over 9 because the employee wasn’t given three hours of free time. Further, the law suggests that even if a live-in employee works less than 9 hours a day, if they do not have 12 hours off during each workday, they should be paid time and a half for any hours that they work during what should be their 12 hours off.

In addition, if a live-in employee works more than 5 days per week, the employee must be paid overtime for all hours worked on the sixth and seventh day (time and a half for the first 9 hours, and double-time thereafter). NOTE: A non-live in employee may work six days a week without having to pay over time or double time, provided that the employee works no more than 8 hours in a day or 40 hours in the week.

Personal Attendants

A personal attendant is a baby sitter or an employee who works in a private household to supervise, feed, or dress a child or anyone else that needs supervision because of their age or disability. These duties include activities related to personal care, such as bathing, showering, getting in or out of a bed or chair, and using a toilet. Personal care duties also include other duties that cannot be performed by the person needing care, including assistance in obtaining medical care, preparing meals, managing money, shopping for groceries or personal items, using a telephone or performing housework. 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.” Also, if a domestic worker lives in the home he/she is not considered to be a “personal attendant.”

While personal attendants in a private household are exempted from receiving overtime compensation under the federal Fair Labor Standards Act, effective January 2014, California provides greater protection for workers through the California Domestic Workers Bill of Rights (“DWBR”) [Labor Code sections 1450-1454]. In California, personal attendants are entitled to overtime compensation at one and one-half times the employee’s regular rate of pay for all hours worked in excess of 9 hours per day or 45 hours per week. The overtime obligation applies regardless of whether the worker is employed by a private household or by a third party employer. The only exceptions are: (1) if the employee’s wages are paid by state or county programs, such as In-Home Supportive Services, Lanterman Developmental Disabilities Services Act, California Intervention Services Act, etc.; (2) for casual babysitters; (3) for babysitters under the wage of 18; or (4) if the person providing the services is the “parent, grandparent, spouse, sibling, child, or legally adopted child of the domestic work employer.” Unless new legislation is passed to extend or remove the sunset provision, the DWBR will expire or “sunset” on January 1, 2017.

Personal attendants who are employed by non-profit organizations cannot work over 40 hours a week or all seven days of the week except in case of emergency. If (in an emergency) they do work over 40 hours in a week or all seven days in any week, they must receive overtime pay. Their overtime rate is 1.5 times their regular pay for any hour worked over 40 in a week or any hour worked on the seventh day of the week. (Unlike other employees entitled to overtime, personal attendants working for non-profit agencies do not receive overtime for working more

Working Hours & Compensation

than eight hours in a day.)

Live-in employees are not required to be paid for sleeping time. They are only required to be paid for hours actually spent carrying out assigned duties.

Meals and Housing Deductions

If you provide meals and/or housing, you can subtract those meals and housing from the employee's paycheck according to specific rules. In order for you to subtract meals and/or housing, three things must happen: (1) they must actually receive or use the meals and/or housing; (2) meals and/or housing are used as compensation in order to meet the minimum wage; AND (3) there is a voluntary and written agreement to credit the meals and housing towards minimum wage. You **cannot** force an employee to take these deductions and cannot charge more than the actual cost (if less than the amounts below).

Meals must be adequate and nutritious and can be deducted at the following rates effective July 1, 2014: Breakfast - \$3.26; Lunch - \$4.47; Dinner - \$6.01. Effective January 1, 2016, the rates change as follows: Breakfast - \$3.62; Lunch - \$4.97; Dinner - \$6.68. Housing must be suitable, decent, and clean, and they cannot be required to share a bed. Housing can be credited for the following amounts as of July 1, 2014:

Type of housing	Amount deducted (effective July 1, 2014)	Amount deducted (effective Jan. 1, 2016)
Room used alone	\$42.33 per week	\$47.33 per week
Room shared	\$34.94 per week	\$38.82 per week
Apartment	2/3 of regular rental value, but not more than \$508.38 per month	2/3 of regular rental value, but not more than \$564.81 per month
Apartment used by you and your partner who are both employed by the same employer	2/3 of regular rental value, but not more than \$752.02 per month	2/3 of regular rental value, but not more than \$835.49 per month

Other than meals, housing, and taxes, you cannot deduct anything from the paycheck. If the employee breaks or loses something, you cannot deduct the replacement cost or require the employee to pay back the item's value, unless it can be shown that the breakage or loss was caused by a dishonest act or was done on purpose. You can discipline an employee, but you cannot place the financial burden on them. You are not allowed to deduct the cost of anything that is used, such as tools, uniforms, and cleaning supplies.

Like other kinds of employees, household workers are entitled to meal and rest breaks in many circumstances. Employees are entitled to a ten-minute paid rest break for every four hours they work or major fraction thereof and a thirty-minute meal period for every five hours worked. Meals and rest breaks cannot be combined or run concurrently.

Personal attendants are not required to be given meal and rest periods.

Working Hours & Compensation

Generally, household workers, like most employees, must be paid twice a month. However, for live-in domestic employees, employers are only required to pay employees once a month.

Discrimination Laws

Both state and federal laws prevent discrimination on a number of criteria, including race, sex, national origin, age, and disability. However, almost all discrimination laws are not applicable to employers with fewer than five employees, which means that most household workers will not be protected by these laws. Employers of a single employee can still be subject to sexual harassment laws.

Independent Contractors

Employers sometimes misclassify workers as “independent contractors” to avoid the coverage of many worker protections (e.g., minimum wage, overtime, workers’ compensation, etc.). Because household workers often work on their own, they may be especially at risk of this misclassification. Remember, however, that the fact that you say and they agree that they are an independent contractor is not determinative.

There is no single factor to determine if a worker is an independent contractor. However, the primary issue is whether the employer has the right to control the manner and means of the work. If you can exercise control over the way in which job is done (how, when, and where you do the work), the worker is generally an employee. In addition, employees (as opposed to independent contractors) generally work under extensive supervision and conduct a job a certain way. Household workers who only work for one family or household who controls their hours are very likely to be considered employees. On the other hand, a household worker who has multiple clients and is in essence running his or her own household services business is likely to be an independent contractor, who will not be covered by the employee protections described in this handout.

Handling Problems

Medical Emergency Information

In case of a medical emergency, you should prepare a list of important names, phone numbers and other pertinent information. You should have a folder with this information and other notes for your caregiver or leave it on your refrigerator door. The following page has a sample you can use.

Conflict Resolution

Clear and regular communication is the key to working out a successful relationship with your employee. Most caregivers appreciate both positive feedback and constructive criticism about how they are performing their work. If problems arise, make it a policy to discuss those issues or concerns as they occur. Feel free to mention any concerns you have about how your caregiver is performing the job. Likewise, you should take the time to sit down and really listen to their concerns, questions, and suggestions. If you need to discuss a problem, try to remember these pointers: (1) give feedback immediately after a problem occurs, (2) give feedback on only one incident at a time, and (3) keep critical feedback short and to the point.

Scheduling regular “check-ins” or “house meetings” is a good way to keep the lines of communication open. A routine meeting is a good time to acknowledge one another’s efforts, air concerns and make plans for future activities such as menus, shopping trips, etc. Try to conduct the meeting in a positive and constructive manner. For example, rather than saying, “you don’t seem to know how to cook,” say, “I usually prefer my meat cooked longer.” Instead of “you never clean the bathroom the way I want,” explain, “dirty towels should be placed in the laundry hamper in the hallway after the bath.”

Serious or Recurring Problems

You may occasionally find yourself with a more serious problem such as:

Attendance

- ◆ Being habitually late
- ◆ Taking extended breaks
- ◆ Leaving early
- ◆ Frequent unexplained absences

House Rules

- ◆ Smoking in the house
- ◆ Making excessive phone calls/cell phone use
- ◆ Watching too much TV
- ◆ Bringing relatives/friends to work
- ◆ Computer use

Handling Problems

Performance

- ◆ Poor attitude
- ◆ Ignoring or causing physical harm to care recipient
- ◆ Not completing tasks as assigned

If problems are occurring on a regular basis, you may find it helpful to review this with your caregiver and to document everything you discuss. It is best to have a witness present - either a family member or a friend.

- ◆ State the problem behavior of the caregiver.
- ◆ Be clear on the type of changes required.
- ◆ Set a time limit for review of the situation.
- ◆ Follow through with the consequences you discuss.

If Dismissal is Necessary

Despite your best efforts to explain, teach and correct, your employee may prove to be unsatisfactory. The caregiver should be aware from the beginning that dismissal without notice may be the consequence of an unsatisfactory performance or violation of stated rules.

Dismissing someone can be difficult. If possible, try to arrange a replacement of your current employee prior to dismissing them. You may want to obtain legal advice or consult the labor board if you are considering termination.

Having a friend or family member with you can make it easier. You should ask the person for any keys or other items she may have of yours. If you dismiss them over the phone, ask them to return all items to you. Write down why you fired the employee and keep it for your records. They may try to use you as a reference in the future and you will want something to refer back to.

When Your Schedule Changes

There may be times when your needs change and your caregiver is no longer needed. If you must, give them as much advance notice as possible, especially if the person is a live-in. You might also consider paying a bonus or two weeks wages if the change is sudden. Reassure them that you will be willing to provide references.

Exploitation of Caregivers by Employers

Employers can behave in ways that may exploit or abuse their employees. This action can take many forms and may not even be recognized as such. Treating your care provider in such a manner is illegal and unethical.

Handling Problems

Some examples of exploitative or abusive behavior are:

- ◆ Asking caregiver to do more than is in the job description without additional pay
- ◆ Habitually asking them to work “a few” extra minutes
- ◆ Changing the caregiver’s schedule frequently
- ◆ Habitually paying late
- ◆ Physical harm and/or sexual harassment

Abuse by Caregivers or Others

Caregivers sometimes abuse their employers. This abuse can be physical, emotional, financial, sexual, or through neglect. As abuse is not always intentional, communicating that one feels taken advantage of may be the simplest way of stopping such treatment. This should be communicated in a direct, but non-threatening way. If the abuse persists, terminating the relationship may be the only acceptable option.

Financial Abuse

The person that you hire to provide in-home care for you should not be the person in charge of your finances, property, or any other assets. It is extremely important that you keep the “separation of duties” very clear to avoid any financial abuse. If your care provider is going to make purchases for you, always give him or her cash and require a receipt. Do not give your caregiver your Social Security number, your checkbook, bankcard, credit card or any other financial instrument that could be used to access your finances. Do not add your caregiver’s name to any documents related to your bank accounts, property or other assets.

Protect important documents, jewelry, guns, alcohol, collections, and other valuable possessions by placing them in appropriate locked containers or cabinets. Home safes, fireproof lock boxes, and gun safes are examples of places you can safely store these items. If there are firearms in the home, be sure to tell your caregiver about them.

NEVER PROMISE YOUR MONEY OR ASSETS TO SOMEONE WHEN YOU DIE IN EXCHANGE FOR CARE GIVEN NOW. Try not to get overly involved in your employee’s private life and NEVER lend them money, clothes, vehicles, or other personal property.

If you find that you need assistance with paying bills, banking, real estate transactions or estate planning, please seek professional assistance from a person or program knowledgeable in this area. Accountants, Attorneys, Daily Money Management Programs, Fiduciaries, and Conservators are examples of professionals and programs you should access when you find you need assistance in financial matters.

Taxes and Social Security

If you hire someone without the use of an agency that serves as the employer of the caregiver, you should know some important facts about Social Security and taxes. The caregiver may be considered a “household employee” and you may be responsible for employment taxes and unemployment insurance. To see if you are considered the “employer” of a “household employee”, check IRS Publication 926, The Household Employer’s Tax Guide for details, **and talk to your personal tax adviser.** You may choose to hire a service to manage the tax matters of your employee. Whether you hire a service or do it yourself, you must keep good records!

Who is a “Household Employee”?

If a caregiver performs household services in or around your home that are subject to your will and control, as to both what must be done and how it must be done, that caregiver is your “household employee.” It does not matter whether you exercise this control, as long as you have the legal right to control both the method and the result of the services.

The two usual characteristics of an employer-employee relationship are:

1. The employer can fire the employee.
2. The employer gives the employee tools and a place to work.

According to EDD’s Guidelines, the following are considered “Household Employees”:

- ◆ Baby-sitters
- ◆ Butlers
- ◆ Caretakers
- ◆ Chauffeurs
- ◆ Cooks (unless employed by catering service)
- ◆ Private yacht crews
- ◆ Furnace workers
- ◆ Gardeners (unless employed by gardening service)
- ◆ Governors/governesses
- ◆ Handy persons
- ◆ Home health care workers
- ◆ Housekeepers
- ◆ Janitors
- ◆ Laundry workers
- ◆ Maids
- ◆ Private, family use airplane pilots
- ◆ Valets
- ◆ Waiters/waitresses (unless employed by catering service)
- ◆ Pool maintenance persons (unless employed by pool maintenance service)

*List is not intended to be exclusive

Who is NOT a “Household Employee”?

People who work for you in your trade or business are not household employees. Workers who follow an independent trade, business, or profession in which they offer their services to the general public are generally not household employees. They are often called “independent contractors.” The general rule is that workers who perform services that are subject to your right to control or direct only the result of the work but not the means and methods of accomplishing the result are not household employees.

EDD has stated the following are not considered Household Employees:

- ◆ Carpenters
- ◆ Electricians
- ◆ Librarians
- ◆ Musicians
- ◆ Nurses (leased from nursing registry)
- ◆ Other skilled craftsmen
- ◆ Painters
- ◆ Plumbers
- ◆ Private secretaries
- ◆ Tutors
- ◆ Your minor children (in most circumstances)
- ◆ Your parents (in most circumstances)
- ◆ Your registered domestic partner (in most circumstances)
- ◆ Workers provided by independent businesses (i.e., janitorial service, catering service, gardening service, or pool maintenance service)
- ◆ Independent contractors

*List is not intended to be exclusive

For What Taxes are Household Employer’s Responsible?

Wages:

- Generally, all wages are considered subject wages and are used to determine the amount of Unemployment Insurance, State Disability Insurance, and Paid Family Leave benefits.

Personal Income Tax Wages:

- Personal Income Tax wages are cash and non-cash payments subject to State income tax. (In most situation subject wages and personal income tax wages are the same; however, they are reported separately on an employer’s EDD quarterly report.)

Personal Income Tax (PIT):

Household employers are not required to withhold PIT but are required to report PIT wages.

Taxes & Reporting

A household employer and a household employee may agree to withhold PIT from the employee's wages. Meals and lodging are excluded if they are provided because it is convenient for the employer and:

- ◆ Meals are furnished on employer's premises, and/or
- ◆ Lodging is furnished on employer's premises and is required as a condition of employment.

Unemployment Insurance (UI):

If total cash wages for household employees is \$1,000 or more in one calendar quarter, then the household employer must pay UI based on all taxable wages paid to employees.

Employment Training Tax (ETT):

If total cash wages for household employees is \$1,000 or more in one calendar quarter, then the household employer must pay ETT based on all taxable wages paid to employees.

State Disability Insurance (SDI):

If total cash wages for household employees is \$750 to \$999.99 in one calendar quarter, the household employer must withhold SDI from employees' wages.

Federal Insurance Contribution Act (FICA):

The Federal Insurance Contribution Act (FICA) is generally referred to as Social Security and Medicare. Employers of household employees are required to withhold and pay Social Security and Medicare taxes on those employees paid \$100 or more in cash wages during a calendar quarter.

The FICA tax is remitted to the Internal Revenue Service on a quarterly basis using Form 942, the Employer's Quarterly Federal Tax Return for Household Workers (refer to the Internal Revenue Service for the amount of the employer's portion of FICA). Forms are available from the State of California Employment Development Department.

Federal Unemployment Tax Act FUTA:

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. **States also have an unemployment tax requirement**, so check with the State Franchise Tax Board for the correct amount. Usually, you will receive a credit for the State Unemployment Tax when filing your Federal Unemployment Tax. The law does not apply to a worker who is a spouse, a child under age 21 or a parent working in the home.

When Must You Pay the Taxes?

By Federal law, wages must be reported each quarter. If no wages are paid for any quarter, the “No Payroll This Quarter” box should be checked.

A “Quarterly Report of Wages and Withholdings for Employers of Household Workers” must be filed in April, July, October, and January (each for the previous calendar quarter).

If an employer stops employing household workers and does not intend to hire any other household employees, the employer must file a final Quarterly Report and Tax Return, along with any taxes due, within 10 days.

Employers must prepare a federal Wage and Tax Statement (W-2) for each household employee.

Annual Taxpayer. An annual taxpayer reports wages quarterly, and pays taxes annually. You are an annual taxpayer if you:

- ◆ Pay household wages of \$20,000 or less annually, and
- ◆ Elect to be an annual taxpayer.

If a household employer elects to be an annual taxpayer and total wages exceed \$20,000 during the year, the employer must notify the Employment Development Department (EDD) immediately and change to a quarterly taxpayer.

Annual taxpayers must file “Employer of Household Worker(s) Annual Payroll Tax Return” with the EDD in January (for the preceding year).

Quarterly Taxpayer. A quarterly taxpayer reports wages quarterly and pays taxes quarterly. You are a quarterly taxpayer if you:

- ◆ Pay household wages in excess of \$20,000 annually, or
- ◆ Pay household wages of \$20,000 or less but does not elect to be an annual taxpayer.

Quarterly taxpayers must complete the following:

- ◆ Payroll Tax Deposit,
- ◆ Due dates vary based upon PIT withholding
- ◆ Quarterly Wage and Withholding Report,
- ◆ Due in April, July, October, and January
- ◆ Annual Reconciliation Statement
- ◆ Due in January (for the preceding year)

*If an employer stops employing household employees and does not intend to hire any others, employer must send a payroll tax deposit, quarterly wage and withholding report, and annual reconciliation statement.

Keeping Records

For Social Security purposes, you need the name, address and Social Security Number of each household employee and the amount of wages paid. Copy the Social Security Number directly from the individual's Social Security Card. If any employee does not have a card he or she should apply for one at the Social Security Office. Questions regarding Social Security requirements may be answered at 800-772-1213 during normal business hours.

W-2 After Year Ends

You must give your household employee copies B, C and 2 of IRS Form W-2 (Wage and Tax Statement) by January 31 after the year in which wages were paid. Send Copy A to the Social Security Administration by the last day of February. You can obtain this form and the instructions for completing it by contacting the Internal Revenue Service.

Employers must keep payroll records for at least four years. If you believe that you are not a subject employer or that your employees are exempt, state law requires that you maintain records of payments made to people who provide household services for at least 8 years.

Records must contain an accurate account of all workers (whether employed, no longer employed, or a leave of absence, or independent contractors) and payments made. Records must include the following information:

- ◆ Full name of employee (first, middle initial, and last)
- ◆ Social security number of employee
- ◆ Date hired, rehired, or returned to work after temporary layoff
- ◆ Last date services were performed
- ◆ Place of work
- ◆ Money paid:
 - Dates and amounts of all payments
 - Pay period covered
 - Cash or cash value of in-kind wages (i.e. meals, lodging, bonuses, and gifts)
- ◆ Amounts withheld from employee wages
- ◆ Disbursement records showing payments to employees
- ◆ Other information necessary to determine payment to employees

Other Legal Considerations

Immigration and Naturalization Service (INS)

As an employer, you are responsible for verifying that your employee is eligible for employment in the United States. Your local office of the Immigration and Naturalization Service will supply you with Form I-9. This form lists the documents that every worker must show to an employer to verify work eligibility in this country. You are required to keep this form and photocopies of the supporting documents in your files for at least three years after the date of hire.

Note: Existing law requires the California Department of Motor Vehicles (DMV) to issue an original driver's license to a person who is unable to submit satisfactory proof that the applicant's presence in the United States is authorized under federal law if he or she meets all other qualifications for licensure and provides satisfactory proof to the department of his or her identity and California residency. However, as an employer, you may not rely on these licenses, which bear the statement "Federal Limits Apply," as verification of a worker's eligibility to work in the United States for the purpose of Form I-9.

Homeowner's Insurance and Workers' Compensation

Employers have legal obligations and responsibilities for on-the-job injuries to household employees. Do not assume that your Homeowner's Insurance will cover injuries sustained by your privately hired caregiver. In fact, many times your policy will specifically NOT COVER injuries sustained by "household employees." Only recently have state and federal laws begun to include household employees under workers' compensation laws. Check with your insurance agent to find out what is covered and what is not, and if there is an addition (a rider) to your policy that will cover injuries your in-home help may suffer while providing care for you. Though California requires homeowner policies to offer this protection for an additional cost, you have to take the initiative to ask your agent about it.

Workers' compensation is generally available to household workers who are injured just as it is available to other injured employees. However, household workers may be excluded if they meet any of the following:

- ◆ Worked less than 52 hours for the employer in the 90 days before the injury happened;
- ◆ Employed by a spouse, parent, or child; OR
- ◆ Earned less than \$100 in the 90 days before the injury.

Many individuals who employ household workers mistakenly neglect to pay into the workers' compensation system. In that case, if the employee's claim is approved by the Workers' Compensation Appeals Board, you will be ordered to pay. If you are unable to pay benefits, then the state will pay you through the Uninsured Employer's Fund (UEF). Benefits available through the UEF include medical expense reimbursement, lost wages, and permanent disability benefits. Although most normal workers' compensation insurance carriers will pay undocumented workers, benefits from the UEF are unavailable to most undocumented workers.

There are several ways to pay for home care services:

- ◆ Private Payment
- ◆ Long-Term Care Insurance
- ◆ Medicare
- ◆ In-Home Supportive Services (IHSS)
- ◆ Veteran's Administration.

Private insurance or Medicare may not cover, or may only partially cover, the costs of home health aides. Companion care is usually not covered at all. Check with your accountant because some of the costs may be tax-deductible.

Private Payment

Most home care is paid for privately by the consumer or his/her family. If you are paying for the service, you can choose to use a registry or an agency or to hire people independently.

Long-Term Care Insurance

Long-term care insurance can provide a shield for the high costs of health care. It is a type of insurance that is intended to fill in the gaps left by general insurance and government benefits. Depending on the policy, long-term care insurance can be extremely valuable, offering coverage not just for nursing home care but for home care, adult day care, and care in assisted living facilities.

Medicare

If you receive Medicare and the doctor has determined that you need intermittent home health care, Medicare may cover home care for a limited time. Ask your physician for a referral. A visiting RN will assess the situation, set up a home health plan and determine Medicare eligibility for payment.

To be eligible, you must meet the following requirements:

- ◆ Require short-term, intermittent skilled nursing care, physical therapy or speech therapy
- ◆ Be confined to your home, except for medical appointments
- ◆ Receive services from a home health agency which participates in Medicare

Medicare may pay for:

- ◆ Part-time or intermittent services from home health aides on a short-term basis
- ◆ Medical social work visits
- ◆ Some medical supplies and durable medical equipment
- ◆ Occupational therapy or physical therapy
- ◆ Hospice or home care for life-limited diagnoses - most hospice care home providers are Medicare-certified and licensed according to state requirements

Insurance or Medicare payment usually means that your home care will be prescribed for a certain number of hours and according to the shifts set up by your home health agency. You may need to pay privately for more help than Medicare will cover.