

Hiring Caregivers: Legal and Financial Considerations

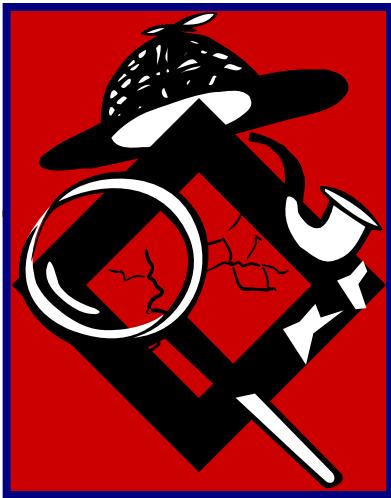
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Hiring Someone You Don't Know

- Considerations for hiring someone to care for yourself, your parent or your child:
 - Your needs
 - Recruiting applicants
 - Requirements for the job (e.g., training, skills, experience, availability); this determines what to look for in a resume or ask in the interview
 - Additional information available from a background check
 - The applicant's references
 - What information and preparation do you need for the interview





Background Checks

- Criminal Convictions - ask applicant to provide you with his or her criminal conviction history from the last seven years
- Department of Motor Vehicles (DMi9 Printout) - if driving will be required, ask applicant to provide; look for license restrictions and prior suspensions or other similar actions. Confirm you are reviewing a genuine, recent copy from DMV
- Check Public Records
 - Misdemeanor and felony crime convictions
 - Small Claims actions
 - Civil lawsuits
 - Family law cases
- Ask for a credit report
 - A consumer reporting company cannot provide information about an applicant without prior written consent. If you ask for a credit report, it should be requested from all three of the agencies, as each one may have different information.

Contracts – Writing or No Writing

- Always have a written employment agreement. The agreement should include the following key terms:
 - Employment at will
 - Rate of pay
 - Whether there will be deductions from pay for meals or housing
 - Hours of work
 - Any special considerations, i.e. maintain adequate auto insurance
 - Alternative work week agreement



Wage and Hour Considerations



- The requirements for wages, hours and working conditions depend on whether the caregiver is a general household employee, a live-in employee, or a personal attendant.

General Caregiver	Live-In Employee	Personal Attendant
Minimum wage	Minimum wage	Minimum wage
8-hour work day	12 – hour work day	12-hour work day
Can work 6 days per week	5 days per week	5 days per week
Overtime after 8 hours and after 40 hours	Overtime after 12 hours and on 6 th day	Not entitled to overtime unless works for nonprofit or more than 20% of duties not as personal attendant

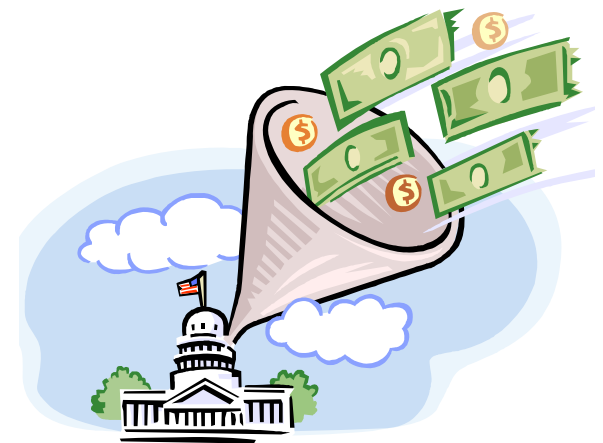


Reporting Requirements

- An agency can serve as the W-2 employer of the caregiver. If you hire a caregiver directly, you are responsible for reporting, withholding and paying taxes.
- *An employer is responsible for the following payments and documentation:*
 - **Wages**
 - **Personal Income Tax (PIT):** Required to report
 - **Unemployment Insurance (UI):** If total cash wages for household employees are \$1,000 or more in one calendar quarter
 - **Employment Training Tax (ETT):** If total cash wages for household employees are \$1,000 or more in one calendar quarter
 - **State Disability Insurance (SDI):** If total cash wages for household employees are \$750 or more in one calendar quarter
 - **Federal Insurance Contribution Act (FICA)**
 - **Federal Unemployment Tax Act FUTA**

When Must You Pay Taxes

- 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).
- 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
- **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 do not elect to be an annual taxpayer
- **Quarterly taxpayers must complete the following:**
 - Payroll Tax Deposit
 - Quarterly Wage and Withholding Report
 - Annual Reconciliation Statement



Terminating the Relationship



- Document problems.
- Secure persons and property (change electronic passwords and reprogram home alarms)
- Inventory all items the employee must return (e.g., keys, credit cards, documents)
- Notify third parties (e.g., schools at which the caregiver did pick-up, health care providers, pharmacies)
- Determine if you need to file a report with any agencies.
- Try to end all relationships on a positive note.

Planning to Stay at Home

- Decision-making authority
 - Elder with capacity to decide
 - Powers of attorney/Home care directive
- Asset Management Authority
 - Conservatorship
 - Power of attorney
 - Revocable living trust
- Funding Sources
 - IHSS
 - Medicare Home Health Care Services
 - Personal investments
 - Long-term care insurance
 - The home
 - Home equity loan
 - Reverse mortgage
 - Family

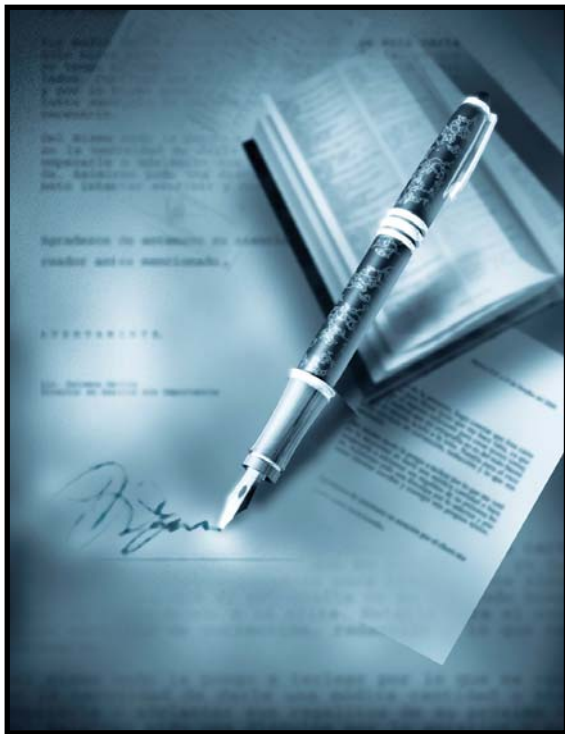


Elder Abuse

- The senior mind
- Potential abusers
- Elder Abuse and Dependent Adult Civil Protection Act (EADACPA)
 - Persons protected
 - Financial abuse defined
 - Remedies under EADACPA
 - Pre-judgment Writ of Attachment
 - Return of property
 - Attorney fees
 - Punitive damages
 - Postmortem recovery for pain and suffering
- Protective orders
- Prohibited donative transfers



Disabled Persons as Estate Plan Beneficiaries



- Overview of SSI and Medi-Cal
- Special Needs Trusts (SNTs)
 - SNT rules
 - Purpose of SNT
- Disinheritance as an alternative

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