

ARTICLES

Hiring help? Don't forget this!

By Sheri Jamme & Lisa Chapman

Sep 27, 2018

As our lives become increasingly busy we need to rely on others to help us achieve our goals. Hiring individuals is a great solution but you can unintentionally expose yourself to legal and financial consequences. If not handled properly, something as simple as employing a nanny, bookkeeper, or chef who works at your residence can create substantial risk.



Thinking through legal issues before you hire workers and regularly re-visiting your insurance is an effective way to guard against potential losses while saving a lot of time and stress.

You may not view people hired to assist with your personal affairs or working out of your home office as actual employees, but local and federal labor laws most likely do. If your hired staff qualify as employees, your relationship with them will be governed by Federal and State employment regulations. Generally, there are three types of workers who may fall into this category.

1. Domestic staff such as nannies, housekeepers, gardeners, chefs and chauffeurs, who assist you in the management of your personal life and home
2. Individuals that provide personal services such as bookkeepers, property managers, event planners, risk management teams, caterers, etc.
3. Individuals who provide professional services on behalf of a family, family office, independent LLC or privately-owned company

The threshold legal issue that must be determined is whether your workers are employees, “independent contractors,” or vendors. We recommend getting a legal opinion from an employment attorney on this issue, as a failure to properly classify a worker will create substantial legal exposure for you. If the workers are deemed employees, then you will need to ensure that you are in compliance with employment laws and regulations.

Ensuring compliance with employment laws when you hire domestic staff can be challenging because of the unique nature of the home environment. The physical premises, the employee's exposure to your personal life and the generally more casual work environment can all be potential risk factors. Consider a few of the employment laws you will need to comply with as an employer:

- Wage and hour related laws: Employees are entitled to sick leave. Some employees may be entitled to overtime as well as meal and rest breaks. You will have to provide legally sufficient wage statements. You must pay all payroll taxes and obtain workers compensation insurance. Specific employee records need to be maintained in a regulated manner. You will be personally liable for any violation of wage and hour laws.
- Personal safety: Many state laws which govern the safety of work environments; requiring they are hazard-free. Home environments are typically not in compliance with these laws and regulations. Have your home audited to ensure compliance.
- Sexual harassment/retaliation: Conduct that is typical and common in a home environment oftentimes violates workplace sexual harassment laws. Risk prevention is critical for this type of exposure, including the use of cameras and other devices.

Compliance is a process you shouldn't attempt on your own. Before you hire do your due diligence. Contact an employment practices lawyer and your trusted insurance advisor to make sure you get the hiring process right.

Start by having a conversation with your insurance advisor. They can evaluate your specific risk factors, provide ways to manage and transfer them with insurance products like, Employment Practices Liability, Workers Compensation, Homeowners, Collections, Auto and Excess Liability.

An annual audit of your legal risks and exposure is a must. Counsel can explain best practices for managing your employees, including the benefits of having a simple employee handbook and other basic tools that help ensure compliance.

Want more detail or have specific questions? We're happy to discuss with you and your clients a risk management review that can help lessen the exposures when hiring employees.

Lisa Chapman is a California licensed attorney and litigator based in San Francisco. She heads the labor and employment and litigation practice at The Royse Law Firm, specializing in legal compliance, litigation, hands-on training, and preventative strategies for individuals, startups and midsized companies.

Sheri Jamme is a Senior Client Manager with the Risk Strategies Private Client Group Burlingame Office. She can be reached at sjamme@risk-strategies.com.

TAGS:
Private Client