

**Enrolled Agents (EAs)** are federally-authorized tax practitioners who have technical expertise in the field of taxation and are licensed to represent taxpayers before the Internal Revenue Service at all administrative levels for audits, collections, and appeals. In addition, Enrolled Agents are the only tax practitioners required by federal law to maintain their expertise through continuing professional education. When you need up-to-date tax assistance, see an Enrolled Agent.

*Enrolled Agents – The Tax Professionals*

# Domestic Employee:

*Your Responsibilities as an Employer*



## **National Association of Enrolled Agents**

1120 Connecticut Avenue NW, Suite 460  
Washington, DC 20036  
202-822-NAEA (6232); 202-822-6270 fax  
800-424-4339 (EA referral)  
info@naea.org • www.naea.org

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## HIRING A HOUSEHOLD EMPLOYEE

When you hire someone to work in your home, you become an employer and must treat the person as an employee. This includes caregivers of either children or adults as well as cleaners. In this brochure, we use the term domestic employee to include all types of caregivers, although they are sometimes called nannies, babysitters, or au pairs. Because the employee works under your direction and control, the employee is not an independent contractor who is responsible for paying his or her own taxes.

Some employers choose not to withhold the proper taxes because the individual is not reporting the income to the government. This is illegal. Employers should realize that if they are audited, the IRS will hold them liable for unpaid Social Security and Medicare taxes. There are several exceptions to the rule that a domestic employee is your employee. Ask your Enrolled Agent about these exceptions.

## OVERVIEW OF FEDERAL RULES

When you hire an in-home employee, you must follow some specific federal laws. Check with your state for its rules. The federal law requires the following:

- ▶ **Verify Citizenship.** Every employer must verify that the employee is a U.S. citizen or is eligible to work legally in the United States. To do this, the employee must have documents and both the employer and the employee must sign Form I-9 Employment Eligibility Verification. The employer should keep this form for 3 years after the date of hiring or 1 year after the employment is terminated, whichever is later. This form must be filled out even if the employee is hired through an agency.
- ▶ **Obtain Employer Identification Number.** All employers need to fill out Form SS-4 and send it to the IRS to receive a personal Employer Identification Number (EIN). Use this number on all IRS employer forms that you file each year. Note: You may need a state identification number and you may have to report a new hire to your state to help them track down those who are behind on child support payments. Check your state for its rules.
- ▶ **Pay Minimum Wage.** You must pay the employee at least the federal minimum wage. You do not have to pay minimum wage if the employee works fewer than 20 hours per week. If the employee works more than 40 hours per week, you must pay time-and-a-half wages for overtime hours worked.  
A live-in employee does not have to be paid overtime if you establish the regular hours that the employee's service is needed. You may exclude sleeping, meal time, and free time in the calculation of hours worked.

Employers are not required to pay any benefits such as vacation days, holidays, sick leave, medical insurance, or any other benefits. Offering specific benefits is up to each employer and can be negotiated with individual employees.

- ▶ **Federal Income Tax Withholding.** You do not need to withhold federal income tax from your employee's paycheck unless the employee requests this. The employee must fill out Form W-4 at the time the employee is hired. If they do not want you to withhold, you should keep on file a signed W-4 with the notation "no withholding requested."

If the employee wants you to withhold, you must look at the tables in IRS Publication Circular E to determine how much to withhold. You would report and pay income tax withholding on Schedule H, Household Employment Taxes when you file your individual Form 1040. At the end of the year you must issue a W-2 to the employee and the Social Security office.

- ▶ **Social Security & Medicare Withholding.** Employers are responsible for withholding and paying Social Security and Medicare taxes for their employees, if cash wages of over \$1400 or more are paid in the calendar year.
- ▶ **Federal Unemployment Taxes.** If you pay one or more domestic employees a total of \$1,000 or more in any calendar quarter, you must pay Federal Unemployment Taxes (FUTA).
- ▶ **Advanced Earned Income Credit.** If you do not withhold federal income tax for your employee, you must notify the person that they may be eligible to receive advance payment of the earned income credit. To do so, give them Notice 797, Possible Federal Tax Refund Due to the Earned Income Credit or a Form W-2, which has the notice printed on the back of Copy C.

## SUMMARY

Finding the right person to provide reliable and in-home services can be difficult and time-consuming. Your Enrolled Agent can assist you in understanding your tax responsibilities in hiring a domestic employee so that you may comply with all applicable tax regulations.