

The Risks of Hiring a Caregiver Under-the-Table

Written by the myCarPal Compliance Team



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Many people are unaware of the enormous financial risks of hiring a caregiver under-the-table in an effort to save money. Essentially, a person providing care in your home on a routine basis is considered to be a domestic worker. The state of California does not recognize domestic workers as independent contractors (form-1099). Therefore, either the client is the employer, or an agency is the employer. If you decide to hire a domestic worker privately for caregiver assistance, you become the employer in the eyes of the state and federal government agencies, including the IRS and Department of Labor.

Sample Scenario:

Your family employed Julie to provide caregiver assistance for you in your home for the past 3 years. You agreed Julie would work 60 hour per week and her compensation would be \$13 per hour or \$780 weekly. Your family decides to let Julie go and obtain a new caregiver.

Example Risk #1: Workman's Compensation Claim

You receive a letter from an attorney 6 months after you let Julie go, indicating Julie is suing you for \$62,000 for a Workman's Compensation Claim. Julie states that she injured her shoulder while helping you transfer into the shower. Julie's suit requests reimbursement for physician bills, hospital bills, surgery bills for her rotator cuff repair, and Physical Therapy. She is also suing for lost wages for the entire period she has been unable to work.

You contact your homeowner's insurance policy holder to submit the claim and learn that you did not purchase a rider for a domestic worker (\$200-\$500 annually) and you are liable for her expenses and lost wages of \$62,000.

Example Risk #2: Unemployment Benefits/Worker Misclassification

You receive a letter from the Unemployment Development Department (EDD) indicating that you are being audited for worker misclassification. Julie applied for unemployment insurance with the EDD and they are unable to verify her employer has paid the required fees into the insurance fund.

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You believe that you are not responsible, as Julie stated she is an independent contractor. The EDD reviewed the case and determined that she did not fit the classification of an independent contractor and she is a domestic worker.

Your Penalty: Employer portion of unemployment insurance on a salary of
 $\$40,560 \times 3 \text{ years}$

Additionally: Penalty for unpaid taxes

FICA taxes: $\$40,560 \times 3 \text{ years} \times 15.3\% = \$18,617$

FUTA taxes: $\$40,560 \times 3 \text{ years} \times 6.0\% = \$7,300$

Example Risk #3: You receive a letter 2 years later from the Department of Labor, claiming Julie filed a wage dispute for unpaid overtime.

Although you had agreed that Julie would work 60 hours per week and receive \$13 per hour, or \$780 per week, you were unaware that the labor codes for domestic workers indicate you must pay overtime (OT) for more than 9 hours worked in a day, or 45 hours in a week.

Based on the fact you were unable to produce pay stubs demonstrating Julie was paid for her OT while working for you, the Department of Labor sided with Julie and she won her judgment.

Your Fine: 15 hours OT per week \times \$19.50 per hour \times 3 years = \$45,630 plus interest

State Fine: 15.3% of your employer portion of the FICA taxes
 $\$45,630 \times 15.3\% = \$6,981$



**Call us today for a free free consultation: 562-438-4300
or learn more at www.MyCarePal.com**

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