

## Hiring Your Household Employee “Under The Table” May Cost More Than You Think

By Robert E. King, Esq.

You’re a busy attorney trying to juggle work and family. To help care for your children, you hire a nanny. Or perhaps your parents are getting older and need some help around the house and you hire an elder care provider or companion to care for them.

Because you think you’ll never get caught, you’ve heard that it costs so much more to hire legally and hey, let’s face it, you weren’t planning on being Attorney General any time soon, you think it’s safe to hire someone under the table. Think again.

The decision to hire someone “under the table” – although it may seem easier and cheaper – ultimately is penny-wise and pound-foolish. If (and most likely, when) you get caught, you will have committed federal tax fraud and endangered your ability to practice law. Even if you don’t get caught, you’ll be missing out on legal and tax advantages that would have applied if you were paying legally. In short, don’t do it.

Admittedly, hiring a nanny, elder care provider or other household employee legally can be daunting. There are many legal, tax and insurance questions that can make employing someone seem like an onerous task. On closer examination, however, hiring a nanny or other household employee can be a straightforward process that benefits both the employer and employee.

### Getting Caught

There are many ways – such as your nanny filing for unemployment (a very common occurrence in today’s difficult economy), social security, disability or workers compensation benefits – that even an amicable parting between you and your nanny could result in you facing an investigation for unpaid taxes. And these are just the unintentional examples. They don’t include your disgruntled nanny, upset over some perceived slight, who quits and turns you in herself – or worse yet, tries to blackmail you. Or the neighbor or co-worker or family member who is envious or has always had a grudge against you and reports you. Or perhaps the IRS decides to audit you and notices the same amount of money flowing out of your bank account every two weeks and gets suspicious.

Under any of these scenarios, the result is the same: You get caught and face considerable consequences.

### The Consequences

Because you must report household employment taxes on your personal federal tax return, failure to pay the appropriate taxes constitutes federal tax fraud. At a minimum the consequences include payment of all back taxes, penalties and interest, and can include federal charges of perjury and tax evasion; fines of up to \$250,000; imprisonment for up to five years; and a criminal record for the rest of your life. There is no statute of limitations for failure to report and pay federal employment taxes.

The professional consequences are equally severe. For example, Business & Professions Code §6068(o)(4) requires that if you’re charged with a felony such as tax fraud, you must report the charge to the state bar, potentially jeopardizing your ability to practice and earn a living. Additionally, if you’re even considering becoming a judge or holding elected or appointed

office, having a “Nannygate” story break about you, just as it did with Bernie Kerik, Zoe Baird, Kimba Wood, or Linda Chavez, can ruin your reputation and career.

Regardless of your interest in higher office, as an attorney, you trade on your reputation for integrity, and being labeled a “tax cheat” isn’t good for anyone’s business.

### Advantages Of Hiring Legally

Happily, there are a number of advantages to hiring a nanny or other household employee legally. For example, you may be able to save taxes by putting up to \$5,000 pre-tax per family per year into a Dependent Care Account (“DCA”) to help pay for your nanny. Alternatively, you may be eligible to claim the federal Child and Dependent Care Tax Credit for a minimum tax credit of 20% for the first \$3,000 in qualifying expenses for each of your first two children per year. Most importantly, you get to spend more time with your family and sleep well at night knowing that you've done everything legally. Don't underestimate how worrying about getting caught and the consequences of hiring illegally can take a toll on you personally and professionally.

### Your Bottom Line

Perhaps the most common fallacy about employing a nanny or other household employee legally is that it will greatly increase your expenses. A review of the additional costs, especially in light of the significant potential tax savings, reveals this contention to be inaccurate.

Social security, medicare, and state and federal unemployment taxes add approximately 9% of a nanny’s salary to the typical household employer’s costs. However, by maximizing your tax advantages, the true “burden” of hiring a nanny can be substantially less, as little as 4% of your costs.

An example best illustrates the true cost. The approximate 9% tax burden on a nanny’s \$30,000 annual salary likely would cost her employer roughly \$2,700. However, the employer could shelter \$5,000 pre-tax in a DCA and use this money toward paying his or her nanny.

The employer normally would pay approximately 30% in taxes on \$5,000 in earnings taking into account the employer’s personal income taxes and other payroll taxes. Thus, the employer’s tax savings from using the DCA would be approximately \$1,500. Subtracting this \$1,500 savings from the roughly \$2,700 paid in taxes yields an effective “cost” of approximately \$1,200, or approximately 4% of the nanny’s annual compensation.

Thus in this typical example, the bottom line cost of hiring someone legally is approximately 4% more, a small price to pay for the peace of mind that comes along with hiring your nanny legally. Remember, paying employment taxes isn’t an option, it’s the law.

Robert E. King, Esq. is the Founder of Legally Nanny<sup>®</sup>, a law firm representing household employers and domestic employment and homecare agencies. King specializes in household employment legal and tax issues and has served as an expert witness in household employment matters. For more information, you may contact the firm at (714) 336-8864 or at [info@legallynanny.com](mailto:info@legallynanny.com).

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