

A Risk Worth Understanding

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You come home from a long day of work to find an incredibly clean house. You immediately bless the name of Jane Smith who faithfully cleans your home. Each week early in the morning you leave her a check for \$100 on the kitchen counter. When you return after work the check disappears along with the dirt and dust. Other than repeating this routine each week you never give it another thought, but you should.

I do not intend to address the Internal Revenue Service (IRS) requirement of Schedule H for amounts paid to a household employee over \$1,700/year. Sure, it is your responsibility to report income paid to a self employed person, but here is the issue I want to share with you.

Let's say you come home from work after faithfully leaving the check for \$100 on the counter for Jane Smith, but to your surprise the house is only partially clean. Next thing you notice is Jane lying unconscious on your kitchen floor. Rushing to her aid and calling 911 Jane is cared for and taken to the emergency room for further evaluation. The rest of the story is that Jane was reaching to get something out of a cabinet only to lose her balance, fall, strike her head and suffer a concussion. The question now becomes, "Who is responsible for her medical bills and lost wages if unable to work for a period of time after the accident". It may be your responsibility and you may have no insurance to defend a claim against you.

The rules are complicated since we are dealing with labor laws, insurance laws and worker compensation laws. Labor and Workers' Compensation laws will help to assess as to whether Jane Smith is your employee. Insurance law will determine if your homeowners' policy will actually defend you in litigation. If Jane Smith is coming to your home as a business owner in the form of a Limited Liability Company (LLC) or Corporation, then there may be limited risk of her being an employee under labor or Workers' Compensation law. I personally recommend to our clients, for both eliminating tax requirements and Workers' Compensation risk, that they hire only an LLC or Corporation for house cleaning and yard maintenance. When retaining the services of an LLC or Corporation it is important to obtain a Certificate of Insurance from either the agent or the insurance company of the service provider. This will be addressed in more detail later.

Now let's say Jane Smith is conducting a cleaning business four days a week for several clients. She happens to be an illegal alien and is not reporting the income on a tax return. Despite this she is free to make a claim in Workers' Compensation Court for damages without risk of IRS or immigration notification. So, how can you be liable to the household employee in a Workers' Compensation Court? The answer I am going to provide is based on my understanding of the Maryland Workers' Compensation laws and discussions with a Maryland Workers' Compensation judge. Each state's law can be slightly or greatly different.

Paying \$1,000/quarter in compensation is the key, but one should not be relieved if the compensation is half that amount. Remember that the income tax filing requirement is based on an annual amount of \$1,700, but Workers' Compensation is based on \$1,000/quarter. The other main issue is that your insurance company may have limitations for what is called "Casual Labor" (defined as a self employed person coming on a routine basis to perform a service on your property for compensation). Most insurance carriers have a Casual Labor Limit that lines up with the state's Workers' Compensation rule of \$1,000/quarter, but there is not a requirement that the insurance company match the state law. Therefore, it is important to verify your insurance company's Casual Labor Limit.

Here are the most common forms of household help that tend to perform services as self employed individuals:

- Nanny
- Babysitter
- Cleaner/House Keeper
- Gardener/Landscaper
- Grass Cutter
- Pool Technician
- Elderly Assistant
- Personal Chef

If any of these service providers are hurt while performing duties for you they may make a Workers' Compensation claim even if they are not your employee. You may win the battle, but lose the war if not properly prepared.

So, how do you prepare if planning to hire individuals to perform services on/in your property? It starts with adding a Workers' Compensation Policy to your insurance plan or a Household Employee Rider to your

homeowners' policy (if available). This simple step will defend you if an action is brought against you and pay any damages if they are awarded. Understand that in many circumstances your homeowner's policy may not protect you - leaving you totally at risk to the cost of defense, all medical expenses and all lost wages of the injured household employee. One more very important point is if the court rules in favor of the employee, the state will pay the employee the award and will be the one suing you for the cost of the award paid.

If you decide to retain the services of an LLC or Corporation, you prepare yourself by requesting a Certificate of Insurance. This certificate should be sent to you from the insurance agent or the insurance company therefore verifying its current viability. If the business owner were to send a copy of the declaration sheet, even if showing current dates, it does not assure that the premium is still current. The agent or the company can verify the current status of the policy and will send you immediate notification if the policy were to lapse.

We all hire contractors and outside service providers for help in our homes, but few are aware of the risk. The bottom line is this... if you have time to shop around for someone to perform services in your home, then you have the time to request the proper insurance or paperwork in advance. Being prepared before hiring someone can save you a lot of money and stress in the future. Feel free to call if you have a specific question about your personal situation.