



# The Nanny and the Tax Man

If ever there was cause for alarm it is the growing number of HNW families who employ nannies and are often violating numerous State and Federal tax and labor laws, many without even realizing it. Often families choose to look the other way, however refusing to accept responsibility for the employment of household staff will not keep the tax man or the attorney from knocking on your door and placing you in serious risk.

Let's take the case of a legal U.S born nanny who has been employed by a HNW family in the state of Illinois for three years. They write her a personal check each week for \$400.00 and most weeks she works 55 hours. The family does not keep records of her work hours or pay history, nor do they give the nanny a pay stub.

What is wrong with this picture?

1. According to the IRS guidelines a full time nanny working for one family inside the family's home is considered an employee, not an independent contractor. Therefore the employer is required to collect and file payroll taxes for the nanny (Social Security, Medicare, Federal and State income taxes, and Federal Unemployment). The common misconception is that the IRS will never find out if they fail to do so. Many families get caught when their nanny files for unemployment or a Social Security benefit. There is no statute of limitations on not filing payroll taxes, so an employer could be caught years down the road and still be forced to pay back taxes, penalties and interest.
2. Families often believe that because they pay a nanny a salary instead of paying by the hour that they are not required to pay overtime or abide by minimum wage requirements. Nannies as well as certain other household employees are covered by Federal wage and hour laws regardless of how they are paid. In the case above there is a wage and hour violation. The nanny works 55 hours per week for \$400, which equates to \$7.27 per hour. The Federal

minimum wage is \$7.25 per hour, so where is the violation? First, the minimum wage in Illinois is \$8.00 per hour, and when the state minimum wage is different than the Federal minimum wage the higher of the two prevails. Second, the nanny is working more than 40 hours per week and by law should be paid time and a half for the hours over 40. For this nanny to be paid legally her weekly pay would be a minimum of \$500.00 (see side bar for calculation).



3. Employers are required by Federal law to keep a record of hours worked by the nanny. Not only is it law, but it is also prudent to keep these records in case a wage and hour dispute were ever filed by the employee. In wage disputes the burden of proof falls on the employer.

In a real life case, in 2007 Washington Redskins owner Daniel Snyder was sued by his former nanny, Juliette Mendonca, for unpaid overtime claiming she had worked as many as 100 hours in some weeks. Although Mr. Snyder and his wife denied that Mendonca ever worked that many hours, the Rockville, MD jury awarded Mendonca \$44,880 in unpaid wages. When asked why the jury sided with Mendonca one juror commented that a lack of timesheets led the jury to believe there was a justified wage dispute.

Just this month former NYPD Commissioner Bernard Kerik was sentenced to four years in prison for tax fraud. Among his crimes? Failure to pay his "nanny taxes."

## Wage & Hour Facts

- Fair Labor Standards Act (FLSA) is the Federal law that establishes minimum wage, overtime, and record-keeping rules. Some states have different laws regarding overtime pay. For example, in California employees are eligible to receive overtime pay for more than 8 hours worked in a day. Where state and federal laws differ the law with the greatest benefit to the employee prevails.
- Fourteen states and Washington, D.C. have minimum wages higher than the Federal rate of \$7.25 per hour. The state with highest minimum wage is Washington at \$8.55 per hour. Georgia and Wyoming are tied for the lowest minimum wage at \$5.15 per hour.

## Wage Calculation from Article

55 work hours per week equals 40 regular hours and 15 overtime hours.

\$8.00 IL min wage  
x 40 regular hours  
\$320.00

\$12.00 time & a half  
x 15 overtime hours  
\$180.00

\$320.00  
+ \$180.00  
\$500.00 weekly pay

**Do you have a question about laws affecting your household staff?  
Send your query to: [info@teresaleigh.com](mailto:info@teresaleigh.com).**

