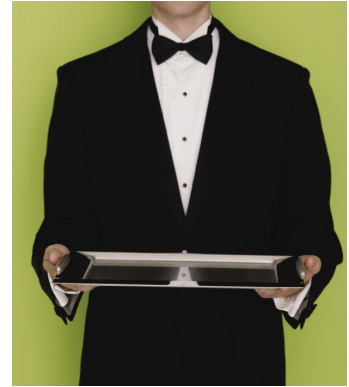


The Domestic Staffing Cycle: From Hiring to Firing



Executive Summary

When it comes to hiring domestic staff, the pitfalls and obstacles are all too familiar: shortage of qualified candidates, increasing regulations, risks to privacy and security, and exposure to litigation and liabilities. The 21st century brings with it an alarming reduction in work force and an equally diminished level of competency. This paper will outline some simple but effective steps for hiring, retaining and terminating staff.

The role of employer introduces threats to financial security that can be prevented through proper planning and preparation. This paper will address how poor hiring procedures, inadequate background investigations, ineffective management and improper termination can all result in financial loss when not handled properly.

Protecting yourself as an employer starts long before you begin seeking candidates for a position within the home. Whether hiring a comptroller, gardener, household manager, nanny or chauffeur, the role of the employer introduces a series of new exposures that require preparation, procedure and risk transfer to prevent getting caught in one of the traps that can impair your own security.

The selection process and precautions applied for hiring a contractor or staff should also be carefully considered. In this paper, simple but necessary steps will be addressed that can be taken to ensure that the employees are a right fit for you and present little danger to the security measures you have put into practice.

Questions to ask include: Are you complying with all federal requirements in your hiring practices? Are immigration rules being reviewed and addressed? Are you conducting thorough background investigations? Where are you finding prospective employees? What measures are being taken to protect your financial data and family from the potential candidate and the employee? Are you properly following payroll tax requirements without mixing personal and business expenses?

Following the hiring process, the exposures presented once a staff member or a third-party contractor is employed require continued diligence. Establishing procedures and practices for non-family members who operate within the home is critical in maintaining safety and security as well as for avoiding situations that can present threats to you and your family.

It is equally important when employment ends that the relationship be closed in a manner that the employee returns to the workforce without access to the family or any confidential information. This paper addresses practices for amicable departures as well as for terminations and dismissals.

The family business has sold for millions. The windfall results in a chain of events that includes the need to hire a financial manager, an administrative assistant and a chauffeur. Where does the family begin? What are the next steps and what pitfalls do they now face?

Taking on the role of employer can be daunting. With the long list of responsibilities that go along with the job responsibility, there is also the fear of opening the family to financial and personal risk. However, if properly informed and prepared, just about any situation that may arise can be avoided, mitigated or handled in an appropriate fashion.

According to a *San Francisco Chronicle* article, the U.S. Census Bureau estimated that 1.5 million Americans are employed as domestic workers.¹ While that figure may seem substantial, there is a growing concern about the shortage of qualified job candidates. As the pool of competent domestic workers continues to shrink, there is now a growing need for employers to educate themselves on the proper process for hiring and retaining skilled employees.

Into the Hire: Find Good Help without Getting Burned

Proper preparation starts long before a hire is made, and the first step is to gain an understanding of the hiring process.

Based on current employment trends, the challenges of proper staffing are only expected to escalate. The U.S. government estimates that by 2026, due to the rapid rise in retirement by the Baby Boomer generation, the work force in the United States will fall 20 million people short of what is needed.² This means that there will be an alarming reduction in the number of job candidates, overall, in the decades to come—a fact that only further emphasizes the importance of having solid processes and procedures in place for obtaining and retaining qualified candidates (see Figure 1).

Step One: Create a Job Description

As the employer, it is critical that each position be clearly outlined in terms of what the job entails, the reporting structure and expectations.

According to a 2006 Domestic Workers United & Datacenter (DWU) report, 46 percent of domestic workers in New York reported experiencing stress at work because they were required by their employers to perform multiple jobs, do work outside of their job description or work for someone other than their employer.³

Having a written and agreed-upon job description signed by the employee at the time of a job offer is one way to ensure an effective working arrangement. Family Manager Teresa Leigh, founder of Teresa Leigh Household and Property Management, LLC, a firm that specializes in providing family management for exceptionally affluent families and their households, has an eight-page form that her clients work from in order to create a viable job description for a worker. It's important to keep in mind that an unrealistic job description will limit the number of potential household employees who will want to interview for the position.

Figure 1: The 10 fastest-growing occupations, 2006-2016
by number of new jobs; numbers in thousands of jobs

Occupation	Employment		Change	
	2006	2016 ¹	Number	Percent
Network systems and data communications analysts	262	402	140	53.4
Personal and home care aides	767	1,156	389	5.6
Home health aides	787	1,171	384	48.7
Computer software engineers, applications	507	733	226	44.6
Veterinary technologists and technicians	71	100	29	41.0
Personal finance advisers	176	248	72	41.0
Makeup artists, theatrical and performance	2	3	1	39.8
Medical assistants	417	565	148	35.4
Veterinarians	62	84	22	35.0
Substance abuse and behavioral disorder counselors	83	112	29	34.3

1. Projected.

Source: U.S. Department of Labor, Bureau of Labor Statistics, *Economic News Releases*, December 2007; www.bls.gov/news.release/ecopro.t06.htm

Put in writing how a nanny should be documenting monetary transactions, keeping track of receipts, handling credit cards and even keeping current with CPR certification. A chauffeur should have an idea of what is and is not expected, such as whether picking up dry cleaning or running errands to the grocery store is within the job scope, says Leigh. In addition, Paul Viollis, Sr., Ph.D., CEO of Risk Control Strategies, a nationally known consulting and investigation firm and leading resource specializing in threat and crisis management and comprehensive security solutions for the affluent community and major corporations, suggests that identifying and confirming qualifications should also be made part of the process. This process should include determining whether a driver has had security training and how often, what alternate routes will be taken if the employer is a high net-worth individual and how much personal information a house manager will have access to.

Step Two: Background Investigations

In addition to checking U.S. citizenship, the hiring process should include a comprehensive background investigation to uncover any red flags. There are some definite warning signs to look for when hiring, says Viollis, such as a job candidate who has traveled outside of the United States for an unexplained reason or who exhibits questionable behavior patterns (e.g., excessive spending or debt), has poor eye contact and communication skills in one-on-one conversations, received a poor evaluation from a third-party interviewer or has demonstrated a lack of trust with the investigator.

Results of the 2007 Household Worker Rights Coalition Survey found that 99 percent of the people working in households are born outside of the United States, with a majority of them being female.

SOURCE: Mujeres Unidas y Activas, Day Labor Program Women's Collective of La Raza Centro Legal, Datacenter

Playing it Safe

Background Investigations Should Include:

- Motor Vehicle Record (MVR)
- Credit check
- Criminal background check (including misdemeanors in all states of residence)
- Disclosure from all criminal and civil jurisdictions
- Cross-reference with known terrorist list
- Cross-reference with known sexual predator list
- Verification of true identity
- Scholastic/vocational training
- Verification of classifications of any kind, depending on position (e.g. lifeguard)
- Business licenses (e.g. pilot, yacht crew, chef, chauffeur, etc.)
- Criminal, civil and character exams
- Checking personal and professional references, including speaking to the previous employers

***Disclaimer:** Understanding local privacy law as mandated by each state is critical when requesting certain background information and/or documentation on an individual.

Step Three: Federal Compliance

The federal government requires all employers to verify identity and work authorization at the time of hire, including employees who are hired to do domestic work. Failure to properly document the status of an employee can lead to federal penalties or worse.

To verify an applicant's identity and authorization to work in the United States, an employer must obtain at least one of the following documents:

- U.S. Passport (unexpired or expired)
- Permanent Resident Card or Alien Registration Receipt Card (Form I-551)
- Unexpired foreign passport with a temporary I-551 stamp
- Unexpired Employment Authorization Document that contains a photograph (Form I-766, I-688, I-688A, I-688B)
- Unexpired foreign passport with an unexpired Arrival-Departure

record, Form I-94, bearing the same name as the passport and containing an endorsement of the alien's non-immigrant status, if that status authorizes the alien to work for the employer

If a person does not present one of the documents that verifies both identity and employment eligibility, he or she must present a document from List A and List B below:

List A - Documents that Establish Identity	List B - Documents that Establish Employment Eligibility
<ul style="list-style-type: none"> ▪ Driver's license or ID card issued by a state or outlying possession of the U.S. ▪ ID card issued by federal, state or local government agencies or entities ▪ School ID card with photograph ▪ Voter's registration card ▪ U.S. military card or draft record ▪ Military dependent's ID card ▪ U.S. Coast Guard Merchant Mariner Card ▪ Native American tribal document ▪ Driver's license issued by a Canadian government authority 	<ul style="list-style-type: none"> ▪ U.S. Social Security card ▪ Certification of Birth Abroad issued by the Department of State ▪ Original or certified copy of a birth certificate ▪ Native American tribal document ▪ U.S. Citizen ID Card (USCIS Form 1-197) ▪ ID Card for Use of Resident Citizen in the United States (USCIS Form 1-179) ▪ Unexpired employment authorization document issued by DHS (other than those listed under List B)

Applicants may also present a "green card" (Alien Registration Receipt Card) to verify both identity and work authorization. A list of these documents is included in the U.S. Citizenship and Immigration Services (USCIS) Handbook for Employers.⁴

Employers will also need to complete a Form I-9, Employment Eligibility Verification Form, which may be obtained from the USCIS, attesting that they have examined the proper documentation, as well as completing Form SS-4 to obtain an Employer Identification Number (EIN) from the IRS.

In addition, families may under certain circumstances be required to obey fair labor hiring laws and not discriminate against job candidates due to race, religion, age, gender or disability. To further prevent employee lawsuits, educate household managers and employees on the importance of practicing effective hiring and screening programs to avoid discrimination.

What to Ask a Third-party Search Agency:

- Who will interview the candidate?
- What tests will be conducted and by whom?
- Who will check references?
- Who will run the background investigation?
- Will training be necessary, and who will provide it?

Outsourcing the Manager: Staffing Agencies

The search process can be conducted in several ways; one method is to hire a professional search firm. Engaging a third-party firm requires an equal amount of due diligence in terms of thoroughly researching each agency to uncover any avoidable exposures; clearly outlining the expectations of the firm in a manner similar to writing a job description; and creating a plan for how job candidates will be identified, interviewed and introduced to the family.

As the search begins and a family's personal information is divulged, a high level of trust is being placed in the hands of the staffing agency, says Leigh. It is the client's responsibility to verify how a professional service keeps a potential employer's personal information disclosed. Like all other vendors, says Leigh, the agency should run background investigations on its staff as well as sign a confidentiality agreement with the family, which is designed to protect the family's privacy. It is critical that the terms of the agreement are clearly stated and that no personal information is disclosed to a candidate until the decision to hire is made.

As with any vendor, the employment search firm should also provide a certificate of insurance. Not all staffing agencies operate in the same way. Some placement firms act as true outsource solutions and maintain the role of employer. When the position is outsourced, the concern should be the contract arrangement with the vendor and verification that all insurance is in place for the placement firm. The alternative to outsourcing the position is a placement firm that identifies candidates and assists with hiring, which is what the majority of staffing agencies do, according to Leigh. The family in this case then becomes the direct employer and assumes all the responsibilities that accompany the role.

Once a candidate has been identified, ask to see all the paperwork including signatures, birth dates, files, photos, all previous employment and work status prior to an interview, says Leigh.

Avoid Over Exposure: Minimize Threats Before They Happen

Not surprisingly, decreasing the amount of turnover reduces a homeowner's risk of exposure, since the addition of staff may change the security in the house completely, says Leigh. This fact only further emphasizes the critical nature of a pre-hire background investigation in safeguarding against a potential breach of privacy.

For example, take the 2005 case of Kelly A. Frank, who was arrested after having been hired as a painter on David Letterman's Montana ranch. Frank was charged with conspiring to kidnap Letterman's son and hold him ransom for \$5 million. The informant who reported the detailed plan to the police explained that Frank had access to the property and knew the location of the nursery.

Secure the Family Information

All employees should be asked to sign a confidentiality agreement. Generally, these types of agreements use standard, contractual devices to protect an employer's financial interests (such as trade secrets, client lists, intellectual property, etc.) from being taken or misappropriated by an employee for his or her own profit. Maximizing the potential penalty of violating a confidentiality agreement could serve as a sufficient deterrent to a breach.

Cyber Security

In several cases, modern-day butlers are acting as the CEOs of the households and properties. And it's not uncommon that simple details, like ensuring that the employer wakes up every morning to a home computer already running and loaded with his or her web sites of choice, be an added job task.⁵ While this may seem minor in scope, allowing an employee online access could lead to personal financial information being accessed by unwanted third-parties and identity theft.

Communication that is not secure is one of the greatest potential problems facing the affluent community, says Viollis. There is no longer the need for a physical break-in to the home to steal valuable information. Internet or wireless components that are not security-encrypted create a window of opportunity for outsiders or insiders to easily access confidential and personal information.

All secure Internet connections should have a sophisticated level of encryption. Without this added layer of protection, a family's personal files, account information and personal identification numbers can be easily accessed.

As an added safety precaution, iPods, Blackberry, Palm Pilots, digital cameras or electrical devices of any kind should be prohibited on the premises, unless otherwise agreed to between employer and employee.

Putting up your Guard: Hire a Security Expert

Even with the best protection and security measures in place, an employee could inadvertently disclose information that puts a family's security at risk. A trusted security consultant with proven integrity, extensive technical expertise and experience working with wealthy clients can assist with finding leaks and plugging them. In addition to mitigating privacy issue violations, once employees are hired, a security consultant can handle problems when the employee is not comfortable with the situation with the employer. In some cases, the employee may prefer a third-party handle an issue with another employee or family member, and a security consultant can fill this role.

The most efficient way to locate a security and risk-management expert is to go through an insurance company or a trusted advisor who will have relationships in place that are vetted. This also saves clients the time of having to conduct their own due diligence.

A security professional should not only offer tailor-made programs,

but also instill a high level of trust with clients, says Viollis. For optimal coverage and risk-management assessment, there needs to be an established level of comfort between both the advisor and client. Without full client disclosure, there is the jeopardy of severely compromising the level of coverage needed in the event of a crisis situation.

Opening Pandora's Box: The Hire

Once a candidate has been selected, approved and hired, the employer now has additional risks to take into consideration.

When a new employee begins his or her job, the work and management has only just begun. Creating a productive work atmosphere is paramount, but should always be in alignment with one's personal safety.

The daily management of household staff requires a great deal of the same communication skills and attention to detail that was involved in the employee-hiring process. The application of basic management practices, encouraging open communication and providing employees with the ability to provide feedback are especially important in maintaining a productive atmosphere, says Leigh. Equally important is the need to remain cognizant of the hours worked and not to allow the informality of working in the home to result in losing sight of the work schedule, time off and other standard benefits.

Domestic workers have access to information on an employer's personal life like no one else. Establishing ground rules and expectations and documenting everything that occurs is a must in order to maintain privacy and confidentiality. If there is sensitive information available in the home, staff should have limited access to the space where it is housed.

Employee Manuals

A family manager characteristically works with clients in order to create an employee manual as well as a protocol or code of conduct for the household. In addition to signing the agreed-upon job description before beginning a position, both the manual and code of conduct should be presented to and signed by an approved candidate. An orientation session with the household manager, employer or family manager to review any issues prior to employment is advised, says Leigh. If an issue arises, the family manager can step in and act as a mediator to resolve the problem.

While the household manual should be the same for all employees in a single residence, the code of conduct is customized to fit individual employee needs and covers such things as what door the employee uses to enter the residence, where breaks should be taken, the appropriate dress code and how to address employers.

Employment manuals are policy-driven, says Leigh, covering standard employment issues such as sick days, insurance,

evaluations, harassment policies, work schedules and housing. The manual should also detail reasons for immediate termination. It's also important that terms specify that background investigations will continue post-hire and are not limited to anything specific, says Viollis. For example, cell phone records should be accessed on a regular basis and random drug screening performed; however, it is important that the same tactics be applied for all employees so as not to single out one individual.

In addition, instructions on the "how to" and "when to schedule" details of the particular tasks within the household and property are also a useful tool to include, says Leigh. These should include detailed information and instructions on routine and preventative maintenance (e.g. scheduling of service technicians), comfort maintenance (e.g. temperature settings for each room or the frequency of linen changes) and safety and security (e.g. fire evacuations, plans and prevention, invasion and awareness procedures).

Travis Dommert, Chief Operating Officer of The Lindquist Group, a domestic staffing company since 1890 which advises high-net-worth families on efficient operation of their homes and fulfillment of their lifestyle objectives, says a property manual can keep your home running smoothly in your absence, especially if there is an emergency.

Manuals should include essential information you want your staff to know about routine and emergency situations including: emergency procedures, vendor management, guest service, building and grounds management, cleaning and laundry, kitchen operations, technology and travel. The manual should be accessible and staff should be familiar with its location and content.

Creating such guidelines decreases the client's liability by presenting information in a written format with consistent policies and rules for employees to follow, as well as promoting good will with staff members and setting guidelines for the management staff.

The most important thing to keep in mind is that if there is no one managing employees on a regular basis, then the employee manual is useless, says Leigh. For households with multiple employees, a hierarchy needs to be established, especially in addressing harassment issues.

A Taxing Issue: Paying by the Book

The laws surrounding payroll taxes of domestic employees are sometimes overlooked or ignored due to their complexity. However, noncompliance can lead to back payments, penalties and even criminal charges. In the historic 1993 case, Attorney General nominee Zoe Baird was removed from consideration for the post after it was discovered that she had hired an illegal alien couple to perform babysitting and household duties, yet had neglected to

Employee vs. Independent Contractor

A **domestic worker/employee** is defined as anyone employed to work in a private home by the head(s) of the household and who takes instructions from and uses tools supplied by the employer. This term includes, but is not limited to, nannies, chauffeurs, housekeepers, companions to the elderly, baby nurses and cooks.

An **independent contractor** is a person who works for him/herself, may have many customers, makes his/her own decisions on how to accomplish the job and is expected to defer to the client's judgment of the client for whom he or she is providing a service.

Characteristics of an Employer/Employee Relationship:

- The service purchaser has the right to require compliance with respect to when, where and how the worker does the work.
- There is a continuing working relationship between the service purchaser and the worker.
- Wages are paid by the hour, week or month.
- The service purchaser has the right to set the worker's hours or to terminate employment.
- The service purchaser provides significant tools and materials for the job.

Characteristics of an Employer/Independent Contractor Relationship:

- The worker offers similar services to the public.
- The worker can realize a profit or loss.
- The work is not performed on the premises of the service purchaser.

***Disclaimer:** Misclassification of an employee can result in back taxes, tax penalties and interest, workers' compensations premiums, unemployment insurance contributions, potential liability under state or federal employment laws for overtime and, in some states, prosecution.

Source: *Business Forum*, "Ignoring tax and immigration laws for domestic help is folly," Raymond A. Zimmerman, January 1, 1995.

pay the appropriate payroll taxes.

Payroll taxes apply only in cases in which an employer-employee relationship exists. This is identified by a continuing working relationship between a worker and his or her employer. Even individuals who work only on a once-a-month basis for a family can be classified as an employee.

A 2008 *Wall Street Journal* article reported, according to IRS data, household-employment tax filings for nannies and other domestic workers fell 10% in the five years ended in 2006. However, according to the Labor Department, the number of domestic employees actually rose during this time, the article reports.⁶ Not filing puts the employer at risk of laid-off or terminated employees filing for unemployment benefits.

Unfortunately, there is little guidance provided by the IRS for those who employ domestic workers; however, the IRS will determine the status of a domestic worker if the employer submits Form SS-8, Determination of Employee Work Status for Purposes of Federal Employment Taxes and Income Tax Withholding. However, doing so has been known to trigger an employment tax audit.

Of course, tax management and payment may be avoided altogether if employees are contracting with a staffing service that acts as the employer.

Most employers are responsible for various types of payroll taxes, including required holdings from the employee and the assessments on the employer. There are also many and varying state and local tax filing and payment requirements.

For example, taxes apply to domestic employees who are 18 years of age or older and whose principal occupation is domestic work, provided their employer pays them domestic cash wages of \$1,700 or more in any year.⁷ Employers who pay a domestic worker \$1,500 or more in wages in one quarter must also pay FUTA taxes on all of the cash wages they paid to that employee.⁸

Wages paid for domestic services are subject to federal income tax withholding only when

an employee requests it and the employer agrees and the amount withheld can be calculated by applying an accepted method and using current published tables.⁹

Even the wages of domestic service workers who are illegal aliens and perform services in the United States are subject to most federal income tax, FICA and FUTA rules.

Additional information about employers' tax responsibilities (including those who hire domestic service employees) appears in Circular E, Employer's Tax Guide, which is available from the IRS.

Improperly Mixing Business and Personal Expenses

Families often fail to properly meet complex and costly payroll tax requirements for domestic workers, says Thomas J. Handler, J.D., P.C., chair of the Advanced Planning & Family Office Practice Group at the Chicago based law firm of Handler Thayer, LLP. Some families may try to partially comply with these complicated requirements and manage the related costs by attaching domestic workers to one or more operating businesses owned by the family. Similarly, other families may leave full-time or part-time family office personnel in such operating businesses. This path, however, is riddled with potentially serious problems, and should be avoided.

Common thinking is that by running domestic workers through an operating business already meeting employee and payroll compliance requirements, one can avoid additional costs and duplication of efforts, Handler says. However, compensation, related taxes and payroll expenses for domestic workers are generally not deductible for federal and state income tax purposes.

Some families will have their virtual family offices ("VFOs") or single family offices ("SFOs") pay compensation and handle payroll compliance for domestic workers. If disbursements are properly accounted for and segregated, this approach can be effective, but mistakes could be costly.

The critical issue with domestic workers compensated by a business is that such

workers are simply not employed by the business. Accordingly, none of the related salaries and payroll expenses are deductible. All expenditures are required to be either taxed as distributions to the family or reimbursed by the family. This process requires additional time, effort, paperwork, expense and, unfortunately, it may also trigger a series of additional, serious problems, Handler says.

If expenditures made by a family business for domestic workers are

Figure 2: Domestic Employment Standard Guidelines

The following guidelines are designed to assist employers in the Greater NY Metropolitan area in determining fair and reasonable working conditions for domestic employees. While pertinent to the East Coast, the general principles apply nationwide.

Hours and Wages

- An average work week should not exceed 40 hours for live-out workers, 44 hours for live-in workers.
- Every hour after 40 or 44 hours should be compensated at time and a half.

Personal and Sick Days

- Employees are entitled to at least five paid personal days. Personal days are meant to anticipate the unexpected situations and emergencies that will come up throughout the year.
- Employees are entitled to at least five sick days per year. These days account for the inevitable periods of illness, and the need for ongoing check-ups to preserve one's health. If these days are not taken, they should be paid at the end of the year.

Health Benefits

- Employers should pay or contribute to employee's health care. This arrangement should be mutually agreed upon.

Immigration Status

- Labor laws apply to all workers, regardless of race, gender, immigration status or age.

Vacation

- Employees should receive at least two weeks paid vacation annually at a time of their choosing, with appropriate notice.
- Employees are entitled to eight paid national holidays off, including:
 - New Years Day
 - Martin Luther King Jr. Day
 - President's Day
 - Memorial Day
 - Independence Day
 - Labor Day
 - Thanksgiving
 - Christmas Day
- Employees should be compensated for any vacations employers take, whether or not the employee is working. The employee should not be penalized for the employer's choice to take a vacation.

Notice of Termination and Severance

- If an employer is planning to terminate an employment contract, the employee should be given three weeks notice or three weeks pay in lieu of notice. After one year of employment, the employer should provide one week's wages as severance pay and one additional week for every year of work with the same employer, up to a mutually agreed upon number of weeks.
- Employees should give at least three weeks notice before leaving a job.

not deemed compensation and taxed to the family or reimbursed by the family, the following issues come into play:

- The use of business funds for a non-business purpose by a family member who happens to be the chairman of the company constitutes a breach of duty as a director and officer of a corporate enterprise. These breaches can include: breaches of bank financing agreements, violation of federal and state labor laws, ERISA, family member-employees' employment agreements, and collective bargaining agreements. These breaches all stem from the unauthorized use of business revenues (cash) for an improper purpose.
- Moreover, such uses of funds result in violations of federal, state and local income tax, payroll tax, workers' compensation laws, and state/federal unemployment laws.

It is clear that properly segregating, accounting for and filing required payroll tax returns for domestic workers is a far better course of action than the potential consequences of improperly mixing business and personal expenses. Often, these compliance concerns alone result in formation of virtual family offices designed to manage and assure such compliance.

Worker's Rights: The Role and Responsibility as the Employer

In 2003, the New York City Council passed the Nanny Bill, which requires employment agencies to provide domestic employers with a "code of conduct" that explains labor laws and to inform workers of their rights (see Figure 2).

The working conditions and abuse of domestic workers are not going unnoticed. DWU of New York represents nearly 200,000 workers from 42 different countries. There are 580 labor organizations for domestic workers, says Leigh. A DWU survey of its members indicates that nearly a third of the respondents report some form of mental, physical or sexual abuse by their employer, and 43 percent report working more than 50 hours a week (Domestic Workers United & Datacenter).

Violations concerning pay, overtime and hours are common; 90 percent of the 2007 Household Worker Rights Coalition Survey respondents reported that they did not receive additional pay when they worked overtime (this figure excludes personal attendants for the elderly and disabled who normally do not have the right to overtime pay under current federal and state laws). In addition, 31 percent worked more hours than agreed, 22 percent were paid less than agreed and 16 percent were not paid or paid with bad checks.¹⁰

Further complicating matters, according to Occupational Safety and Health Administration (OSHA) standards, nearly two-thirds (63 percent) of household workers consider their jobs hazardous,

Source: Domestic Workers United, www.domesticworkersunited.org/media/files/5/Standard-Guidelines.doc

Figure 3: Workers' Compensation Laws for Domestic Workers by State (As of July 2007)

Type of Law				Threshold for Compulsory Coverage		
State	Excluded (b)	Voluntary (c)	Compulsory	Time Worked	Earnings	Other
AL		X				
AK		X				
AZ		X				
AR		X				
CA			X	52 hours during 90 days prior to injury or exposure to disease	Or \$100 during 90 days prior to injury or exposure to disease	Excludes a household worker employed by the worker's parent spouse or child
CO			X	40 hours per week or 5 days per week		
CT			X	26 hours per week		
DE			X		\$750 per three months	
DC			X	240 hours during quarter		
FL		X				
GA		X(d)				
HI			X		\$225 per every quarter during preceding 12 months	
ID		X				
IL			X	40 hours per every week for 13 weeks during year		
IN		X				
IO			X		\$1,500 during 12 weeks prior to injury	
KS			X		Employer payroll \$20,000 in prior year for all workers	
KY			X		2 employees, 40 hours per week	
LA	X					
ME		X				
MD			X		801 per quarter	
MA			X	16 hours per week		
MI			X	35 hours per every week for 13 weeks during preceding 52 weeks		
MN			X		\$1,000 in any three month period of previous year	
MS		X				
MO		X(d)				
MT		X				
NE		X				
NV		X				
NH			X			
NJ			X(e)			
NM		X				
NY			X	40 hours per week, non-farm		
NC		X				
ND		X				
OH			X		\$160 per quarter	

Type of Law				Threshold for Compulsory Coverage		
State	Excluded (b)	Voluntary (c)	Compulsory	Time Worked	Earnings	Other
OK			X			Employer payroll in preceding year of \$10,000 per worker
OR		X				
PA		X				
RI		X				
SC			X			Four employees per employer; payroll more than \$3,000 in previous year
SD			X	20 hours per week for more than six weeks in 13 weeks		
TN		X				
TX		X(d)				
UT			X	40 hours per week		
VT		X				
VA	X					
WA			X			Two employees; 40 hours per week each
WV		X				
WI		X				
WY	X					

Domestic workers include household workers such as babysitters, house cleaners, gardeners, etc.; in some states excludes family members.

(b) Domestic workers are specifically excluded from the workers' compensation system.

(c) Employers are permitted to provide workers compensation coverage voluntarily.

(d) Elective or optional.

(e) Coverage is voluntary for domestic workers but on an elective basis, i.e., an employer may elect, in writing, prior to an accident, not to be subject to the law. However, this requirement renders the law compulsory in practice. In New Jersey, homeowners insurance policies must contain provisions covering domestic workers.

Source: "Workers' Compensation: Exposure, Coverages, Claims," Insurance Information Institute; <http://www.iii.org/media/hottopics/insurance/workerscomp/>

citing concentrated exposure to toxic cleaning chemicals, human contagion, risk of injury from cleaning high or difficult-to-reach places and heavy lifting, while 86 percent of domestic workers do not receive training in job safety or workplace injury prevention (Brady, Nadeau).

Legal requirements for employers are no longer limited to federal tax codes. It is incumbent upon the employer to be aware of local and state legislation as well. In 2007, San Francisco passed legislation requiring all employers to provide one hour of paid sick leave for every thirty hours worked (DeBare, A-1).

Risky Business: The Need for Insurance

Taking on the responsibility of a staff member in the home can substantially alter the insurance landscape. Among the many things to consider when hiring a new employee, the addition of a domestic worker requires a thorough review of the current risk-management plan to determine if the insurance coverage is adequate.

Coverage areas to consider include unemployment and workers' compensation, employee benefits, automobile insurance, fine arts coverage and for families with multiple staff members, employee dishonesty and employment practices liability insurance. While the liability section of a homeowner's policy excludes coverage for liability that is covered by a workers' compensation policy, domestic employees are exempt from the workers' compensation

law in many states (see Figure 3).

Unemployment and Workers' Compensation

Unemployment and workers' compensation insurance are both government-regulated coverages that vary by state. Failure to comply with unemployment requirements can result in penalties, back taxes and criminal charges.

A standard homeowner's insurance policy will not pay for fines, court awards or any other penalties against the employer. There are two types of protection available: employer's liability and workers' compensation. However, domestic workers are specifically excluded from the workers compensation system and therefore are typically not covered by insurance companies.

Employing domestic staff places a family or homeowner in one of the "gray areas" for insurance. As an employer, the individual now assumes a risk typically covered by commercial insurance. Personal liability coverage does provide protection if the employer of household staff is sued.

There are two ways to handle a potential loss related to the injury of a worker on the job. A family or homeowner acting as employer can opt to extend the schedule of benefits of a workers' compensation policy to domestic employees. Voluntary purchase of workers' compensation coverage removes the need for an employee to sue an employer for negligence should they get

hurt on the job. However, the placement of this coverage is often challenging as it offers insurance companies little premium for potentially large losses. Many of these policies are placed through the state-sponsored insurance facility and are rated based on head count, not payroll.

If workers' compensation coverage is not purchased, the family or homeowner who has household staff injured on the job would potentially face legal action by the employee. The personal liability coverage in most homeowner's policies would provide protection for a suit brought by an employee for injuries sustained on the job. The injured party would be required to prove negligence in order to collect damages and the insurance carrier for the homeowner's coverage would provide defense of the suit brought by a household worker.

In any type of employer/employee relationship, it is important to confirm that proper coverage is in force. In the 2002 court case of *Fernandez v. Lawson*, the California Court of Appeals determined that the homeowner was liable for the injuries to a subcontractor injured while removing a tree on the homeowner's property. This was a result of the homeowner having failed to verify a certificate of insurance as evidence that workers' compensation coverage had been secured.¹¹

While this isolated case highlights the potential exposure an employer faces when hiring contractors, it is equally important to consider the risks associated with the direct employment of household staff. If an injury occurs while on duty, the homeowner may be subject to legal action by the employee. As an example, if the nanny is picking up the homeowner's children from school and is struck by another vehicle and injured, this could be construed as a workers' compensation claim since the employee was on the job when the accident occurred.

Employee Benefits

While health, life and disability insurance is not mandatory, it is an added protection that should be discussed with an insurance agent. Employee health insurance plans typically provide insurance coverage for nonwork-related medical bills.

In a large number of cases, the household employee may be the only staff member in the house, in which case the additional cost of adding health insurance may be an immediate economic challenge to the family. However, it is important to take into account that the reliability of staff is contingent upon the health of the employees,

which is directly related to the availability of medical treatment. It is also important to consider the impact on an employee's performance if the employee's spouse or children are unable to seek treatment for illness.

Beyond health insurance, additional benefits could also be considered, such as life insurance, retirement savings plans, medical or child-care savings plans, disability insurance and long-term care insurance. It is also the decision of the employer in determining how much of the expense of additional benefits an employee pays.

Automobile Insurance

If an employee is given access to an employer's vehicle, a review of his or her MVR and Comprehensive Loss Underwriting Exchange (CLUE) reports is recommended. If the employee operates his or her own vehicle on an employer's behalf, providing proof of insurance is a good practice to determine what coverage is in force, as well as a safety precaution. There should also be a discussion about transporting additional children in the vehicle, since automobile accidents rank at the top of the list of claims processed for child-care workers and in most cases any resulting lawsuit will return to the owner of the vehicle (Sturgeon).

In addition, any employed person or household member who is going to have access to a vehicle owned by the household should be made known to the insurance company.

Fine Arts Coverage

With the added risk of employing staff in the home, there are several steps that can be taken to help prevent damage or loss to a family's personal possessions.

First, consult with an insurance broker to include a schedule of all valuables for coverage through the homeowner's policy. This schedule should be updated annually or each time a new employee is hired. In addition to the schedule of valuables, a detailed record keeping system should also be created as well as an appraisal report, including artwork, jewelry, wine and any other collections. It is also a good idea to keep photographs of the valuables to store with the records in a safe, offsite location.

Employee Dishonesty Insurance

In 2003, professional golfer Davis Love III discovered the body of his brother-in-law and business manager, Jeff Knight, with a

Thirty-five percent of private companies have experienced some kind of employment-related event in the past five years, such as a charge filed with the Equal Employment Opportunity Commission (EEOC), a written demand from an employee or a lawsuit.

SOURCE: *Rough Notes* magazine, "Leading the Way in EPLI," vol. 150, no.7, Elisabeth Boone, CPCU, (Chubb), July 2007.

self-inflicted gunshot wound to the head. Following the incident, authorities uncovered that Knight had embezzled nearly \$1 million from the professional golfer to pay credit card debts. Love was quoted as saying, “He was running our lives, basically. He was our most trusted and loved family member.”¹²

The Love case is evidence of the dangers everyone faces when another party has access to financial records and accounts payable. Whether a staff of unrelated employees or family members, strict accounting controls to prevent acts of embezzlement and fraud are necessary. Internal controls that limit joint access to check writing and expense authorization, such as regular audits and applying simple accounting rules that require two signatures on every check over a certain amount, serve to reduce the risk of potential financial loss.

Employee dishonesty coverage provides reimbursement for funds that are misappropriated by a covered employee. In addition to the protection, the insurance carrier can provide loss control and procedures to assist in guarding against loss. If a claim occurs, the policy will provide reimbursement of funds and expenses to cover the loss. An employee who has committed fraud is excluded from future claims and should be terminated. Employee dishonesty insurance can be added to most insurance package policies by endorsement as either a standalone or part of a comprehensive package.

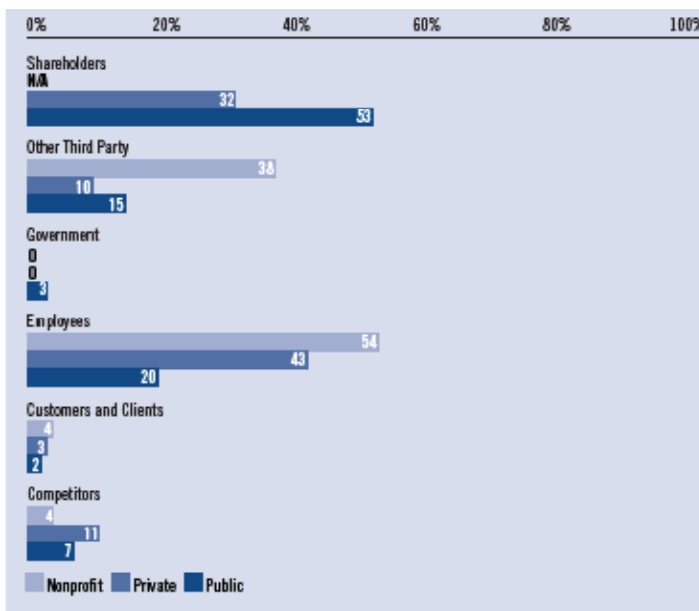
Employment Practices Liability Insurance (EPLI)

The relatively limited use of Employment Practices Liability Insurance (EPLI) by family employers sometimes makes its purchase cost-prohibitive. Certainly, as the size of one’s staff expands, purchase of this coverage warrants serious consideration as each additional employee raises the chance of a claim.

EPLI covers against workers’ claims that their legal rights as employees of the company have been violated, which can cost the homeowner in the form of payment of wages, punitive damages and possible statutory penalties. These policies will reimburse against the legal costs of defending a lawsuit in court and for judgments and settlements, whether the suit finds in favor of the company or not. Typically, policies do not pay for punitive damages or civil or criminal fines. Liabilities covered by other insurance policies such as workers’ compensation are excluded from EPLI policies.¹³

Diversity in today’s workplace is common among domestic staff, and the resulting litigation surrounding recent discrimination cases has been grabbing more and more headlines. Many wage and hourly violation lawsuits now also include an element of wrongful termination, discrimination or a harassment charge. The Equal Opportunity Commission Coverage (EEOC) reports the number of wrongful termination, sexual harassment and retaliation claims has increased 20 percent in recent years, with settlement amounts increasing by 200 percent during the same period.

Figure 4: Claimant Distribution by Ownership



Claims filed by private employees have drastically increased in recent years.

SOURCE: Towers Perrin: Directors and Officers Liability 2007 Survey of Insurance Purchasing and Claims Trends; http://www.towersperrin.com/tp/showdctm.doc.jsp?country=global&url=Master_Brand_2/USA/News/Spotlights/2008/2008_06_11_CompaniesRelyOnUSDandO.htm

Employees can sue an employer if they feel that they have been discriminated against for a variety of reasons, including race, religion, sexual orientation and age. In fact, three of the most common forms of litigation come from wrongful termination, discrimination and sexual harassment claims. The employer is also at risk for employee-to-employee harassment, sexual or otherwise, as well as harassment from family or outside acquaintances.

In 2009, New York Knicks center Eddy Curry was sued by a former driver for sexual harassment. Dave Kachinsky alleged Curry sexually harassed, berated him with racist slurs, and owed him \$98,000 in back-pay and expenses. He was also seeking \$5 million in compensatory damages. Curry denied all allegations.

Though Kachinsky was hired as an around-the-clock chauffeur, he claimed his duties often fell far outside his job description. Curry hired Kachinsky despite a criminal record that includes a three-year prison sentence for a 1992 burglary in New Jersey, as well as three years probation in 2004 for resisting arrest, according to records.

Following recommended domestic staffing guidelines and obtaining EPLI coverage can help reduce the risk of allegations, such as the ones Curry faced in 2009.

The 2007 *Towers Perrin: Directors and Officers Liability Survey of Insurance Publishing and Claims Trends*, which includes employers professional liability insurance, found that about 43 percent of the claims filed against privately held companies were employee-related actions for such things as discrimination and wrongful termination (see Figure 4).¹⁴

There are a number of highly public cases filed by household employees that allege wrongdoing by an employer. Of the workers who responded to the DWU survey, nearly one-third claimed some form of mental, physical or sexual abuse from their employer. Results also found alarming statistics on working hours, with 67 percent of the respondents reporting that they did not get paid overtime despite work weeks that typically lasted 50 to 60 hours. In addition, 79 percent of the respondents indicated that they are expected to be on call 24 hours a day.

In June 2007, Naomi Campbell reached agreement in the suit brought by her former employee Amanda Brack, alleging she had been physically and verbally abused. In another high-profile case, Sting and his wife were ordered by British courts in July 2007 to pay their former personal chef damages for sexual discrimination in a case that revolved around demands placed on a staff member who was pregnant with a history of a miscarriage.

Should Employment End

Termination of a staff member is an inevitable part of being an employer. Whether it is resignation or employer termination, it is just as important for the disengagement to have a clear process to follow as it was in the recruiting and hiring stage. It is the employer's responsibility to ensure that employment ends in a manner that the employee returns to the workforce without unwanted access to the family or its information.

In addition to the purchase of EPLI insurance, good loss control can be an excellent deterrent to a potential legal nightmare. A checklist should be in place on steps to be taken if and when an employee is terminated, including updating all security codes and passwords and conducting a full interview prior to departure to determine what the staff member had access to in terms of information and locations, advises Leigh. Other measures include:

- An exit interview should be conducted with full documentation of the reason for termination.
- Schedules and routines following termination should be altered.
- Alert specific people (think of everyone, cover all bases) who would need to know of the termination.
- If time permits, terminations should be reviewed with a security consultant so that all issues can be discussed and accounted for prior to ending the relationship with the staff member.
- Get a signed copy of the confidentiality agreement. Make sure that the employee understands the length of the confidentiality/nondisclosure agreements and knows that it will be enforced to the fullest extent of the law if there are any violations.
- The employer must retain the Form I-9 for three years after hire or one year after termination, whichever is longer.

Staff recruitment, hiring and retention are challenging and difficult

EPLI Coverage at a Glance:

- Sexual harassment
- Discrimination
- Wrongful termination
- Breach of employment contract
- Negligent evaluation
- Failure to employ or promote
- Wrongful discipline
- Deprivation of career opportunity
- Wrongful infliction of emotional distress
- Mismanagement of employee benefit plans

processes for any employer. When this task is assumed by a family, many of the standard risks are magnified due to the family's limited experience and financial exposure. When assuming the role of employer, risk management changes in many ways. Despite the concerns that are raised, proper planning and preparation can mitigate or remove many of the potential pitfalls.

Development of a strategy for the job description, hiring procedure, management and termination process makes for a safer and better controlled environment. While there are numerous ways to protect the family from the burdens of legal liabilities and other exposures relating to employment practices, the more prudent approach is risk transfer in conjunction with proper risk management.

Professional search firms and families both face the proverbial "needle in the haystack" in trying to locate competent staff. As outlined above, the shrinking workforce now requires even greater detailed planning on the part of the family. Properly executed, the simple steps included in this paper will better prepare a prospective employer to professionally handle an employee crisis should one arise.

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