How Your Household Help Puts You at Risk

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Your nanny, a young immigrant, is crying. She assures you she's all right, and since her English is not good anyway, you decide not to pry. Later, your gardener tells you with a wink that she's having "man trouble." You shake your head and smile, never suspecting that he's the troublesome man in question, or that your failure to pry may have been the biggest financial mistake of your life.

"If one employee on a job site has another coming on to them," says household and property management consultant **Teresa Leigh**, "under federal law, the employer is required to investigate and document the claim." By dismissing the maid's anguish as a rocky romance, you are exposing yourself and your bank account to a lawsuit and a significant judgment.

Since the mid-1990s, the number of domestic workers in the United States has doubled, according to the U.S. Census Bureau, which estimated in 2008 that 1.5 million people fell into the job category census takers used to call "private household service."

Awareness, as in any demographic explosion, is lagging behind the trend. A study released in March by **Ace Private Risk Services** showed that of their survey group of Americans with $5 million in investible funds, half employed household help. Yet less than one-third carry insurance to protect against sexual harassment, wrongful termination or workplace injury. "They think, 'It's not going to happen to me'," says Leigh.

Employee lawsuits are not the only risk that comes with prosperity. The more cars you own (and loan), the more exposure you have. Yachts, swimming pools and jet skis are liabilities as much as they are signs of success. Even the best of intentions can lead high-net-worth individuals into risk: Bob Courtemanche, division president of Ace Private Risk, cautions that homeowners who serve alcohol at a fundraiser or wedding can be sued if an over-served guest harms another guest — or crashes into another driver long after he or she leaves the party.

It is domestic staff, however, that provide the bulk of lawsuits, precisely because nannies, maids, and gardeners have become such widespread fixtures of an upscale lifestyle. Many wealthy homeowners consider their household help members of the family, and don't think about their constant presence in terms of hours worked and overtime pay.

In 2010, workers filed a record number of wage complaints against employers, and initial reports indicate that the number went up again last year. Most of those were class actions, which homeowners may imagine only occur in factories and big-box stores. Even a relatively small staff can file collectively, however, as long as they all share the same complaint.

Making a case against household employers is getting easier. "More people are filing because they can," says Leigh. Last year, New York state passed a **domestic worker bill-of-rights** law that mandated vacation days, sick days and a weekly day of rest, and is following up with a campaign to make workers aware of their rights.

The U.S. Department of Labor's **Timesheet app** for smartphones, which allows employees to track their hours, breaks and days off, has also put newfound power literally in domestic workers' hands. If the app is the only record of a worker's hours, says Leigh, "the judgment will fall to the employee because you can't prove otherwise."

The push for worker rights comes as judgments in injury lawsuits are escalating. Historically, too, the number of injury and workplace lawsuits rises in tough economic times. "We're seeing it in our results," says Ace's Courtmanche, "and we've seen this before in downturns. If the economy is hurting, if someone is in an accident, they are more liable to find a lawyer and the severity of the suit can be higher."

Having money in itself invites big judgments, as plaintiffs' lawyers tend to target the richest individual involved in a wrongful action, no matter how peripheral. "Regardless of your percentage of the fault, joint and several liability allows them to go after the deepest pockets," says Courtemanche.

Juries of their peers tend to play along. "If you're living in a mansion and the six people sitting on the jury don't," says Roy Solomon, a principal at **Amity Insurance** in North Quincy, Mass., "you can get a big number."

Yet insurers like Solomon find themselves at pains to convince their wealthy customers to cover themselves for unexpected situations with umbrella policies that "follows form" of existing coverage while boosting the payout limits. "People think if they don't have insurance, they won't get sued for it," he says.

Another theory is that the wealthy believe they are bulletproofed by success. "They don't discuss risk because of ego. They don't have fear," says Leigh. She cites the case of a hedge-fund manager she met with who was paying his household staff through his company. "He placed his entire company and wealth at risk because he refused to move the household to another entity," she says.

"The old-school mentality is that wealth is a shield, says Leigh. "The time when you'd say, 'Here's $500 bucks, have a good day' doesn't do it anymore. Our culture is opening up and saying justice is the shield."

To change the mindset, Leigh says, the wealthy need to start talking about risk among themselves. "They don't discuss it at their cocktail parties," she says. When they do get in trouble, she adds, high-net-worth homeowners tend to settle out of court to preserve their profile as capable managers. "The value of their brand is about making good business decisions."

Leigh recently visited a client who presented her with an article about a homeowner who was sued for working a nanny 60 hours without paying overtime or taxes. "He told me, 'I have four kids that have nannies and we're violating this'," Leigh says. 'Why didn't anyone tell me?'"

"Maybe they did," she responded, "and you didn't hear them."

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