



Keeping in Line

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New York State, in the autumn of 2010, passed a landmark Bill of Rights law for domestic workers - and for high net worths, it's actually caused an increase in legal wranglings.

Some legitimate, some not so much.

The legislation, which amends the New York Labor Law, New York State Human Rights Law, and the New York Workers' Compensation Law, provides "certain rights, benefits, and protections to domestic workers, guaranteeing those who come within its coverage overtime pay at time and a half of their regular hourly rate for over 40 hours in a week, or 44 hours in the case of live-in domestic workers; one day of rest every seven days or overtime pay in lieu of the day off if the employee works seven days that week; and three paid days off annually after one year of service.

Workers' compensation is a big piece of this. It's a policy that tends to get shrugged off, though the costs are nominal (in New York, on average, it is \$480 annually).

But, now, as the new law dictates, domestic workers have the ability to file a disability claim, whether they are paid on the books or not, potentially leading their employers to treacherous waters.

"What I've seen is that they [high net worth individuals and families] are extremely confused about the law," says Teresa Leigh, founder and CEO of Teresa Leigh Household Property Risk Management in New York and Raleigh, N.C. "And when they are confused about the law, they have a tendency to do nothing."

Leigh says in some cases there is a sort of detachment, because at times, families feel that the law doesn't actually affect them. One alarming reason is misinformation given to wealthy families that leave them believing certain staff members, like the housekeeper or the nanny, are independent contractors, and must take responsibility should they be injured on the job.

But, Internal Revenue Service rules are very clear on how to define these individuals: "The general rule is that an individual is an independent contractor if the payer has the right to control or direct only the result of the work and not what will be done and how it will be done. The earnings of a person who is working as an independent contractor are subject to Self-Employment Tax. You are not an independent contractor if you perform services that can be controlled by an employer (what will be done and how it will be done). This applies even if you are given freedom of action. What matters is that the employer has the legal right to control the details of how the services are performed."

In other cases, Leigh notes that because "these households are moving so fast" - having three to four of them, and moving between all of them - raising money for charity, entertaining through the social season; to sit



down and think about household staff becomes less of a priority.

Here's the issue: in this scenario, individuals and families don't react until there is a problem and most probably by then it's too late.

Leigh also points that many HNW individuals believe it's better for them to self-insure.

"It kind of plays to the psychology that money can fix things," she says. "But in reality, workers' compensation is actually a good thing and it's common sense. Because what it does is that it removes the emotional management of an incident should an employee become injured on the job."

She explains that the manner in which workers' compensation is constructed; it reviews claims and external parties decide what the benefits should be.

"That's a good thing because if you decide as a homeowner to self-insure, then the onus is on you to begin when the disability would start and then when payments would end. So there's no unbiased third party that's involved...it's really good business sense to have someone else who is not emotionally involved in the situation look at the claim. Because sometimes it could be filed and it's not necessarily a valid claim. Maybe the person hurt themselves at their own home and then tried to blame it on their employer. So it's just really good common sense to have that other person, that other entity," she says.

New York-based, Anka Bojic, executive director at international insurance and benefits brokerage Krauter & Company, says she has seen a rise in claims since the Bill of Rights was signed in 2010.

These can range from injury to harassment (as the new law amends the New York Human Rights Law, which removes the domestic workers exemption and provides workers the right to sue for sexual harassment, as well as

harassment on the basis of race, religion, gender and/or national origin.)

Bojic says her firm always recommends that the client buy workers' compensation and disability insurance plans. But, if a client, for example, owns additional homes in Connecticut and Florida, and the same domestic employees travel with the family, they need to adhere to those states' policies as well. Bojic adds that her firm would be able to write a type of global workers' compensation policy listing all of the states the domestic employees could or could not travel to. She stresses that traveling to different residences and states can open up many complications.

While claims may be on the rise, Bojic says wealth holders are reacting accordingly because the penalty for non-compliance can be a high price to pay - as much as \$1,000 to \$5,000 a day, she says.

Bojic recalls an incident with a client who had roughly six homes, spread in places like The Hamptons, New York City and at least two in Florida. Before a bureaucratic error was detected, her client was found not to be compliant and fined to what mushroomed to be \$95,000 - "for ultimately a fifteen hundred dollar policy," says Bojic.

"The political answer is 'yes, you want to be covered,' making sure you have the right insurance in place. However the financial penalty implications are outrageous. It would not behoove them to take advantage of it. That's why the penalty is so high. To force people to do what is required," she says.



What other measures can individuals and families take to protect themselves? Teresa Leigh Household Property Risk Management's Leigh says - which applies to everyone - the optimal way is to have workers' compensation be a part of the total insurance package.

"Because the premium on workmen's comp is just a fraction of what a lawsuit would be or what the fees would be if some staff person fell and hurt themselves while on the job, which is very easy to do," she says, adding: "It's really just about knowing that it's true. And that, it's prudent business common sense to manage your household well, instead of an ad hoc basis."

Krauter & Company's Bojic says the firm does a yearly review - a comprehensive risk management assessment, heavily taking into account change of life factors. The company examines new, blended families, butlers, nannies, handymen, and gardeners.

In the instance where secondary homes have been purchased, Krauter & Company takes into account outside contractors that are being hired, such as a landscaping business. The question of inherited properties also comes up.

Queries have even gone as far as whether a client's wife, from whom he is separated but still legally married to for financial reasons, has hired anyone new. If it's a case where divorce has occurred and the nanny will be split between two homes - the policies can get quite cumbersome, she says.

"We always want to mitigate any potential exposure," emphasizes Bojic.

Pearl sees a trend developing that may only marginally be related to the new law. She refers to it as 'professionalizing.'

"So anybody who was paying people off the books - I think

that was a pretty good wake-up call to stop doing that. [There have been] many other wake up calls, too. But that was kind of the final wake up call that you shouldn't pay people off the books. And I think in general people are putting human resources policies in place, because they understand that just as in the workplace, they can be subject to a lawsuit."