

## **HIRING SOMEONE TO WORK IN YOUR HOME**

### **Definition of "employee"**

For Federal employment tax purposes, a household worker is an employee who performs services in and around your home. If you hire someone to do household work and you are able to control what work he or she does and how it is done, you have a household employee. This is true even if you give the employee freedom of action. What matters is that you have the right to control the details of how the work is done.

Examples of household workers are the following:

Babysitters, companions for the elderly or infirm, maids, caretakers, nurses, housekeepers, cooks, butlers, family chauffeurs, and maintenance personnel.

Independent contractors, self-employed persons and representatives of an agency or au pair program who work in or around the home are not employees, for Federal tax purposes. If you are unsure whether a worker is your employee, for Federal tax purposes, you may file Form SS-8, Determination of Employee Work Status for Purposes of Federal Employment Taxes and Income Tax Withholding, with the District Office of the Internal Revenue Service (IRS). In addition, IRS Publication 15, Circular E, Employer's Tax Guide, and Publication 15-A, Employer's Supplemental Tax Guide, provide guidelines for determining whether an employer-employee relationship exists. In certain cases, the Federal Fair Labor Standards Act (FLSA), contains a broader definition of the employer-employee relationship, for purposes of minimum wage and overtime wage payments, than the IRS definition, for Federal tax purposes.

### **Initial Steps When Hiring**

One of the first steps to take when hiring a new employee is to establish the employee's identity and employment eligibility. This can be done by having the employee complete the Employment Eligibility Verification Form, Form I-9, at the time of hire. The employee must present documents from those listed on the form as acceptable to establish identity and employment eligibility. The employer must review these documents and attest that these documents appear to be genuine and relate to the individual being hired. The employer retains the Form I-9 and must present it, if requested, to officers of the Immigration and Naturalization Service (INS), the Department of Labor, or the Office of Special Counsel for Immigration-Related Unfair Employment Practices. Form I-9 can be found in the Handbook of Employers (M-274), and is available in limited quantities from the local office of the INS. In addition to containing the Form I-9, the Handbook answers many commonly asked questions regarding the employment verification procedures.

In addition, an employee who does not have a social security number (SSN) can get one by completing Form SS-5, Application for a Social Security Card. This form can be obtained at local offices of the Social Security Administration or by calling 1-800-SSA-1213.

The employer's identification number (EIN) is issued by the Internal Revenue Service. The EIN

is used to complete quarterly and annual employers' tax forms. An employer can apply for an EIN by completing Form SS-4, Application for Employer Identification Number. The Form SS-4 can be ordered by calling 1-800-TAX-FORM. If the employer's tax forms are being filed for the first time and the employer has not applied for an EIN, the employer should write "NONE" in the space provided for the EIN. The Internal Revenue Service will then assign an EIN.

## **Federal and State Laws Related to Household Workers' Wages**

### **Minimum Wage and Overtime Pay**

Under the Federal Labor Standards Act (FLSA) domestic workers are entitled to minimum wages and overtime pay. However, casual babysitters and companions for the elderly and infirm may be exempt from coverage. The Federal minimum wage is currently \$7.25 per hour. Some States' minimum wage rates are higher than the Federal rate, in which case the higher rate should be paid. The FLSA permits costs to employers of providing certain facilities, such as meals and lodging, to be counted as a part of wages. However, meals and lodging are not subject to social security and Medicare taxes if they are furnished for the employer's convenience, on the employer's premises, and as a condition of employment.

Domestic workers are also entitled to 1½ times their regular rate of pay for hours worked in excess of 40 hours a week unless the employee resides in the household where employed. The FLSA does not require premium pay for weekends, vacations, holiday work, or daily overtime; nor does it require rest periods, discharge notices, or severance pay. Also, FLSA does not limit the number of hours an employee may be required or scheduled to work, if the employee is age 16 or older. However, some State or local laws may address these matters. More detailed information about FLSA can be obtained from the Wage and Hour Division of the Employment Standards Administration, U.S. Department of Labor. The address and phone number can be found under the Federal Government Section of the local telephone directory.

### **Federal and State Income Tax Withholdings**

Income tax withholdings lessen the employee's burden of having to pay a lump sum tax at the end of the year. Employers are not required to withhold income tax on wages paid to a private household employee. However, if the household employee requests withholding payments and the employer agrees, the employer should give the employee the appropriate State and Federal withholding forms to complete. Form W-4, Employee's Withholding Allowance Certificate is the Federal form. IRS Publication 15, Circular E, Employer's Tax Guide, contains withholding tables for computing the amount of Federal withholdings. Employers can obtain a booklet containing the State income tax withholding tables from a State tax office.

### **Federal Insurance Contribution Act (FICA)**

The Federal Insurance Contribution Act (FICA) finances a Federal system of old age, survivors, disability, and hospital insurance that is generally referred to as social security and Medicare. Employers are required to withhold and pay social security and Medicare taxes for a private household employee, if \$1,100 or more in cash wages are paid to that employee during a year. The law does not apply to a worker who is a parent, spouse, or a child of the employer under age

21 working in the home. There are exceptions to a parent working in the home which can be found in the instructions for filing Schedule H (Form 1040). Earnings for household workers (such as babysitters) under age 18 are exempt from the FICA unless household employment is the worker's primary occupation.

Note: If you are in the business of running a hotel, rooming house, or boarding house, your employees are not household employees. Wages you pay these employees are subject to social security and Medicare taxes, even if they earn less than \$1,100 during the year.

For 1999, the social security tax is 6.2% for both the employer and the employee (12.4% total). This applies to the first \$72,600 paid to the employee. The Medicare tax is 1.45% for both the employer and the employee (2.9% total). This applies to all wages paid to the employee. You may pay the employee's share of the social security and Medicare tax for the employee, but if you do, you must include this amount in the employee's income for income tax purposes (Box 1 of Form W-2).

More information about withholding these taxes can be found in IRS Publication 926, Household Employer's Tax Guide.

### **Federal and State Unemployment Taxes**

The unemployment insurance (IU) program provides income protection to household workers who lose their jobs through no fault of their own. The program is operated jointly by the Federal and State governments. The Federal Unemployment Tax Act (FUTA), administered and collected by the Internal Revenue Service, is used to pay for the administration of the program nationally. The State Unemployment Tax, administered and collected by State governments, is used for the payment of unemployment benefits for eligible workers.

Household employers who pay wages of \$1,000 or more in any quarter of a calendar year to all household employees are required to pay both Federal and State unemployment taxes. A few States require that UI taxes be paid if the household employer pays wages of a lesser amount than \$1,000. Household employers may pay FUTA taxes on an annual basis by completing Schedule H of the IRS Form 1040.

### **State Workers' Compensation**

Workers' compensation programs provide income and medical benefits to employees (and their survivors) when a work-related injury or death occurs. In many States (and in the District of Columbia and Puerto Rico) domestic workers are covered by workers' compensation. Coverage, however, will differ from State to State based on the number of employees to be covered, the amount of wages paid, or the number of hours worked. In States where there is no mandatory coverage, employers are permitted to provide voluntary coverage, except in Louisiana, Missouri, Virginia, and Wyoming.

### **Earned Income Credit (EIC)**

The EIC is a refundable Federal tax credit available to certain qualifying low-income workers both with and without children. Eligible employees who expect to meet certain income limits and expect to have at least one qualifying child can receive up to 60% of the credit in advance with

their pay during the year. Form W-5, Eamed Income Credit Advance Payment Certificate, must be completed by the employee to receive advance payments of EIC throughout the year. Employers must notify certain employees about the credit. IRS Publication 596, Earned Income Credit and IRS Notice 797, Notice of Possible Federal Tax Refund Due to the Earned Income Credit explain the eligibility for the EIC and the employee's rights as to how to request advance EIC. For more information or to request these documents, call the IRS at 1-800-829-1040, or visit the IRS website at [http://www.irs.ustreas.gov/prod/search/site\\_tree.html](http://www.irs.ustreas.gov/prod/search/site_tree.html).

### **The New Child Tax Credit**

The news for 1998 tax returns is something every parent will be glad to hear. Now, for each qualifying child under 17, a parent may be able to subtract up to \$400 from the 1998 Federal income tax, unless the income exceeds specific levels. For the 1999 Federal tax returns, the Child Tax Credit will go up to \$500 per qualifying child.

A dependent child or descendent, stepchild or foster child for whom one can claim dependency is qualified for the \$400 credit. For one or two children, the total tax credit cannot exceed one's regular tax liability.

The Child Tax Credit is reduced by \$50 for each \$1,000 in which the Modified Adjusted Gross Income exceeds \$110,000 for joint filers, \$75,000 if unmarried, or \$55,000 if married filing separately.

The Child Tax Credit is claimed on Line 43 of Form 1040 or Line 28 of Form 1040A. For three or more children, complete Form 8812 and attach to the 1040 or 1040A form. For more information or to request these documents, call the IRS at 1-800-829-1040, or visit the IRS [http://www.irs.ustreas.gov/prod/search/site\\_tree.html](http://www.irs.ustreas.gov/prod/search/site_tree.html).

### **Other Important Tax Forms**

An employer must furnish copies of Form W-2, Wage and Tax Statement, to an employee from whom income, social security, or Medicare taxes have been withheld or to whom an earned income credit has been paid in advance. Beginning with the 1997 return, an employer must also file Form W-3, Transmittal of Income and Tax Information.

Copies of Form W-2 must be furnished to employees no more than 30 days after employment ends, but no later than January 31 of the following year. A copy of each form must also be sent to the Social Security Administration by the last day of February with the transmittal Form W-3, Transmittal of Wage and Tax Statements. Form W-2 is processed by the Social Security Administration to update employees' earnings records. The Social Security Administration provides IRS with the income tax data it needs from the Form W-2.

An employer reports wages of \$1,100 or more that are paid to a household worker on her/his own Federal income tax return (IRS 1040, Schedule H). When filing the 1040 form, the employer's share of the social security and Medicare taxes, along with the taxes withheld from the employee's wages, are reported and paid. In some cases, the employer may need to make estimated tax payments during the year to cover the additional tax on Form 1040. The Form 1040 instructions provide details.

The number of credits household workers need to qualify for social security benefits depends on age and eligibility requirements. Most people need 40 credits (10 years of work) to qualify for benefits. Younger people need fewer credits to be eligible for disability benefits, or for their family members to be eligible for survivors' benefits if they should die.

A household worker with more than one employer may not accumulate the maximum four credits per year. For example, in 1999 a person could earn one credit for each \$740 of reported earnings, up to a maximum of four credits for the year. The earnings, however, from any one employer must equal at least \$1,100. A household employee who worked for four employers and was paid \$700, \$800, \$900 and \$1,100 respectively, would have only \$1,100 in wages under the social security program and would receive only one social security credit. However, a household employee who worked for four employers and was paid \$1,000, \$1,100, \$1,200 and \$1,700 would have \$4,000 in wages under the social security program (for the three employers who paid \$1,000 or more) and would receive four social security credits.

It is important that household employees' wages are reported so that the employees have enough credit for social security benefits. If not reported, or incorrectly reported, the amount of the benefit may be less.

More detailed information is available from the Federal and State agencies so named. Their phone numbers generally can be found in the local telephone directory or on the Internet.