



*Legal Hotline for Michigan Seniors
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A program of Elder Law of Michigan, Inc.*

LEGAL CONSIDERATIONS OF HIRING WORKERS IN YOUR HOME

If you hire an individual to provide housekeeping, personal needs or other services in your home you may be an employer and subject to various laws discussed below. The applicability of these laws depends on whether the worker is considered your employee. Generally if you have the right to tell the worker what to do, and how, when and where to do it, then the person is considered an employee. Other factors that help decide if the worker is your employee include: you have the right to hire and fire; you provide the tools and equipment for the worker to use; you set the hours of work; or you pay by the hour or week.

If the worker is employed by someone else to perform the services in your home you are not liable as an employer. For example, if you hire household help from an agency or business which selects, pays and supervises its own employees you are not considered an employer.

You are not considered an employer if the person working in your home is self-employed. **It is not enough to have the worker agree to be called an independent contractor.** The facts must show that the worker is really self-employed. These factors tend to show that the worker **is self-employed**: advertising their services to the general public; working for more than one person at a time; providing one's own supplies and equipment; and payment on a job by job basis. As a general rule, it is difficult to prove to a government agency or court that a household worker is self-employed. You take the risk that fines or penalties will be imposed upon you for treating a worker as an independent contractor rather than an employee.

Social Security/Medicare Taxes (FICA)

You are subject to these taxes if you pay a household employee at least \$1,400 per calendar year (in 2004). You must withhold 7.65% from the employee's wages and match this with your own payment of 7.65%. You must file Schedule H of IRS form 1040 each year to report these taxes. You must also file forms W-2 and W-3 and provide the employee with a copy of the W-2. You must obtain an employer identification number (EIN) from the IRS using form SS-4. As an employer you must keep records of wages and employment taxes. IRS Publication 926 explains these requirements in detail. The IRS phone number for publications is 1-800-829-3676.

Federal Income Tax Withholding

You are not required to withhold income tax for household employees. If you chose to do so you can refer to IRS Publication 926 for instructions.

Unemployment Tax

Michigan The state tax applies to employers who pay \$1,000 or more to domestic workers in any calendar quarter in the current or preceding year. The tax rate is 2.7% of wages for 2 years and is then based on the employer's (your) own history of benefit charges and taxable payroll known as an employer's unemployment insurance experience. Reports must be filed quarterly with the Michigan Bureau of Workers' & Unemployment Commission on Form UC 1020. Further information can be obtained by calling Employer Customer Relations (800) 638-3994.

Federal The federal unemployment tax (FUTA) applies to employers who pay household employees \$1,000 or more in a calendar quarter during the current or previous year. The tax rate is 6.2% of the first \$7,000 paid to each employee. There is a partial credit for state unemployment payments. IRS Form 940 must be filed annually but payments generally must be made on a quarterly basis. IRS Publication 926 explains your responsibilities.

Workers' Compensation

This law applies to any employer who employs at least one worker for 35 or more hours per week for 13 weeks in a year. There is an exemption for any household domestic worker who has worked less than 35 hours per

week in at least 13 weeks in the preceding year. Employers subject to this law must provide some type of workers' compensation insurance.

Information is available from the Bureau of Workers' Disability Compensation, Compliance Division, in Lansing at (517) 322-1195. If you are not subject to the Workers' Compensation law you should make sure that your home insurance covers injuries to household workers.

Citizenship/Legal Alien Status

Employers must verify that each new employee is legally eligible to work in the United States using form I-9 from the US Citizenship and Immigration Services. The forms and instructions can be obtained from the Detroit office at (800) 259-8560. Information, downloading of forms, and forms by mail can also be located on their website at: <http://uscis.gov>.

Minimum Wage/Overtime

Federal The federal law generally requires that household employees be paid the minimum wage of \$5.15/hour and time and a half for hours over 40 in a work week. However there is an exception for companions (not trained professionals) hired to care for ill or aged individuals in the home. Information is available from the US Dept. of Labor listed under the United States Government in your phone book.

Michigan The Michigan minimum wage/overtime law may apply even if you are exempt from federal law. State law applies if you have 2 or more employees at the same time within a calendar year. State law requires \$5.15/hour minimum wage and time and one half for hours over 40 in a work week. Information is available from the Wage & Hour Division of the Michigan Dept. of Labor & Economic Growth in Lansing at (517) 322-1825.

If you are subject to either the federal or state law there are specific record keeping requirements regarding an employee's hours and wages.

If you are a senior, you can get specific questions answered at the Legal Hotline for Michigan Seniors. Call 1-800-347-5297 (372-5959 for the Lansing area).

The Legal Hotline is a program of Elder Law of Michigan, Inc., a non-profit organization. If you would like to support our work, please consider sending a tax deductible donation to the Legal Hotline, 3815 W. St. Joseph, Suite C-200, Lansing, MI 48917. Thank you.