

What to Know if Hiring a Caregiver Privately

Hiring a caregiver is a beautiful thing to do for a loved one, but it also carries tremendous obligations because whoever has hired the caregiver is now AN EMPLOYER. Being an employer in California is no small task. You are now held to the same standard as if you were a CEO of a big corporation. It is therefore imperative that you understand your legal obligations.



Hiring a caregiver through an agency provides some protection, but it is also important that you know if the agency is following California law. It is a common misperception that you escape liability by using an agency. This is not true. Rather, you and the agency simply become joint employers.

This sheet provides some general tips as an overview of your responsibilities. It is not exhaustive, and a list of employment attorneys is included for your reference.

Hiring a Caregiver – Where to Start

- Look for references from friends and family. Interview the caregiver and ask a trusted person to interview with you to get their opinion.
- Obtain written permission from the candidate to run a background check and ask for past work references.
- Register with the EDD as an employer to obtain an EIN.
- Purchase proper workers' compensation insurance.
- Sign up with a payroll company to provide and track hours worked and sick time.

Key Laws to Understand

- Wage and hour rules under the California labor code apply. You are not exempt from these rules because you are a private person.
- The California Domestic Worker Bill of Rights (AB 241) sets forth specific rules for caregivers and personal attendants.
 - A personal attendant is defined as a domestic worker who spends at least 80 percent of their time performing work such as supervising, feeding, and dressing a person who needs assistance due to advanced age, physical disability or mental deficiency.
 - Overtime is calculated at 1.5 times the regular pay for any hours worked over 9 in a day or 45 in a week.
 - If the caregiver lives in the home as a requirement for the job, there are no exclusions for sleeping hours. If, however, you are offering room and board, but they are not required to be "on-call" during the night, you need a voluntary housing agreement to avoid paying expensive overtime for hours your caregiver sleeps.
 - Deductions for lodging and meals are allowed and the amounts change yearly.

What You Need to Do

- Understand your legal obligations.
- Have a written caregiver agreement created before the start of the relationship.
- Do not classify anyone as an independent contractor or pay in cash with no record.
- Meet with an employment lawyer for guidance and consider having the lawyer assist in your paperwork and plan.
- Be proactive. It is never too late to put a good system in place.

Employment Lawyers

The referrals below are provided for your convenience. Inclusion of a lawyer does not imply endorsement of their services, nor does exclusion reflect on any lawyer's contribution to the community.

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