

The Legal Review

Bringing the Law to Life for the Household Employment Industry

*A Complimentary Resource from
Breedlove & Associates*

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In an effort to help you strengthen your business practices and steer clear of legal trouble, The Legal Review will share findings from relevant legal cases. We've found that the easiest way to gain a practical understanding of complex tax and labor law is by reviewing real-life situations. These stories will illuminate potential legal landmines for your agency and/or your clients, and more importantly, show you how to avoid them.

Washington, D.C. Department of Employment Services v. Family Home Lien for Delinquent Unemployment Tax Payments

A family living in Washington, D.C. employed a nanny with the intention of paying her legally so she could get the professional benefits she deserved (social security, medicare, unemployment, etc.). Unfortunately, despite good intentions and efforts, they failed to meet the tax filing deadlines which ultimately resulted in a lien being placed on their home. This case illustrates how easily mistakes can happen in this specialized area of the law.

The Mistake

When the nanny was hired, the family alerted their accountant. He offered to help get them up and running as household employers, but clearly stated that all the ongoing payroll, tax and labor law responsibilities were beyond his area of expertise. They decided to let the accountant open employer tax accounts and file new hire reports with the state – with the understanding that the family would take over the ongoing obligations (payroll, state and federal tax filings, year-end filings/document preparation, etc.) themselves. The family considered searching for a household employment specialty service but never found time in their busy schedules to shop around. Like many families, they wrongly assumed everything could be handled at year end – and, therefore, procrastinated.

Per their arrangement, the accountant obtained federal and state tax account numbers for the family. He also filed a new hire report for them with the District of Columbia. The nanny did not want state or federal income taxes to be withheld from her paychecks, and the family agreed to pay both employee and employer portions of social security and Medicare. Due to this arrangement, no taxes needed to be withheld from the nanny's paychecks. So, the nanny was simply paid the net pay that they had agreed upon each week. The accountant provided the family with a sample pay stub to provide to the nanny every pay period.

Obviously, after making uninformed assumptions about the timing of obligations, they missed state and federal deadlines. The first problem to rear its ugly head was the unemployment tax delinquency.

The Law

Almost all states – including Washington, D.C. – require that household employers file unemployment tax returns quarterly, within a month after the close of every calendar quarter. After a quarterly filing deadline passes, states send out delinquency letters to all registered employers who have not filed their return(s). Delinquent taxpayers are then expected to immediately file a late return. Upon receipt of the late return, the states send a second letter to the taxpayers in question informing them that they owe penalties and interest on their late payment. If the taxes, penalties, and/or interest remain delinquent for an extended period of time, warning letters are sent to the taxpayers, and eventually a collection agency gets involved or a lien is placed on the taxpayer's personal property.

The Mess

After unknowingly missing three quarterly deadlines, the family decided to move from Washington, D.C. to New York City for a better career opportunity. In attempting to sell their home, they received the bad news that a lien had been placed on their home by the D.C. Department of Employment Services.

They contacted the state and learned that the lien included unpaid household employment taxes and interest, along with a penalty equal to 10 percent of the tax due. (The District of Columbia claimed that they sent several warning letters to the family, but the family maintains that they never received them).

The Outcome

A placement counselor with a New York agency who was helping them find a new nanny referred the family to Breedlove & Associates to handle their new nanny's taxes and payroll. In a mild state of panic due to the situation in Washington, D.C., the family contacted us immediately to fully understand their obligations in New York and to see if we could help them clean up their mess with the D.C. Department of Employment Services.

We immediately filed all of the appropriate District of Columbia household employment tax returns retroactively. Fortunately, we were able to get the lien removed and most of the penalties waived. Then, we closed down their employer tax accounts in Washington, D.C. and set them up properly for their new hire in New York.

How the Whole Thing Could Have Been Avoided

As is almost always the case in the tax and legal world, an ounce of prevention is worth a pound of cure. Instead of counting on the guidance of a C.P.A. who was only vaguely familiar with the obligations for household employers, the family could have avoided a lot of problems and stress had they simply made a quick call to a household employment specialist like Breedlove & Associates. Our personalized phone consultations ensure that families are fully informed and prepared to successfully handle all the payroll, tax and labor issues that come with being an employer. Whether they ultimately use our service or not, this 10-minute call usually saves them thousands of dollars and dozens of hours. Bottom line: Tell your families to lean on us so they don't get a lien on them!

If you have additional questions, please call 888-BREEDLOVE (273-3356) or visit www.breedlove-online.com. We're here to help our agency partners provide their candidates and clients with information, tools and resources that improve the employment relationship, eliminate legal risk for all parties, and increase the professionalism of the industry.



Tax & Payroll Services for Household Employers