

The Legal Review

Sharing Case Law that Affects 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.

Protect your FEIN. Protect your Agency.

Providing your agency Federal Employer Identification Number (FEIN) to a client is unnecessary and risky.

The Mistake (that almost occurred)

A family asked a placement agency for its "tax ID" for "tax purposes."

The Law

There are two reasons why clients might ask for your FEIN. The first reason – and by far the most common – is to take advantage of dependent care tax breaks. Families are allowed to take tax breaks on expenses directly related to the care of their dependents (children or elderly). When taking these tax breaks, the **employer** FEIN must be provided. This informs the IRS who the employee works for. Families – and sometimes even their accountants – often misunderstand the purpose of this information and erroneously ask for the agency's FEIN. In both permanent and temporary placements, the caregiver does not work for the agency that placed her – she works for the family that employs her.

The second reason a family might ask for your FEIN is to apply the agency placement fee toward the dependent care tax credit. To report these fees correctly, the FEIN of the agency that provided the placement services is required. However, it is generally accepted that placement fees do not qualify as direct caregiving expenses, and therefore, cannot be utilized for tax break purposes. (Note: For the vast majority of families, itemizing placement fees will not result in tax savings anyway because the caregiver's salary already exceeds the expense limit for dependent care).

The Mess

- A family hired a nanny through a placement agency in August of the calendar year. She earned approximately \$18,000 in wages through the end of the calendar year.
- The family registered for the Dependent Care Account, allowing them to save approximately \$2,300 in child-care expenses for the year.
- At tax time, preparation of the family's federal income tax return (Form 1040) required declaration of child-care tax breaks and identification of the employer of the childcare provider (via the FEIN).
- The family did not have an FEIN, as they were not paying their nanny legally. *Please note that families are not entitled to tax breaks if they pay their nannies "under the table."*

The Mess (continued)

- Both the family and their accountant requested the placement agency's FEIN in order to complete the child-care tax break form for inclusion with their 1040.
- The agency wanted to better understand why so many clients requested their FEIN and decided to inquire with Breedlove & Associates upon this client's request. Upon our explanation, the agency questioned the client to determine the reason for the request.
- Per our written and verbal advice, the agency informed the client that they were required to provide their FEIN, as the employer, on all childcare-related tax documents. They did not provide the agency FEIN to the client.
- The client's accountant contacted Breedlove & Associates to argue the point. Unfortunately, the accountant did not understand that the FEIN required was not that of the agency that provided the service but that of the employer of the nanny. We had the difficult conversation of informing the accountant that (1) only household employers that pay their nannies legally are entitled to tax breaks; (2) the FEIN necessary for recognizing tax breaks is always that of the employer; (3) accountants that assist in completing tax forms in error can be held accountable.

The Outcome

- The accountant delivered the bad news to the client.
- The agency did not provide its FEIN to the client.
- The agency prevented being recognized as the employer of a nanny paid illegally.

To help your clients understand the tax obligations for both employer and employee, we have developed a simple educational flyer entitled "Protect your FEIN. Protect your Agency". The flyer can be downloaded from <http://www.breedlove-online.com/partners/library-of-educational-literature-helpful-tools> along with our other helpful resources. Or feel free to invite your clients to call us for a complimentary, no-obligation phone consultation. In about 10 minutes, we can assess their situation, answer questions, and generally guide them through the compliance process. Whether they sign up with our service or not, we'll make sure this kind of ugly situation never happens to one of your clients.

If you would like hard copies of our "Protect your FEIN. Protect your Agency." flyer, just send an email to info@breedlove-online.com.

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.

