

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.

Unreported Temporary Care: An Honest Mistake

With nanny taxes embarrassing politicians left and right these days, many American families want to know what they can do to avoid a similar fate. This edition of *The Legal Review* will discuss a common error made by families when hiring temporary care.

The Mistake

A family hired three nannies to care for their children over the course of a month, with each nanny only working a couple days a week. Two nannies were paid a total of \$1,200 each for their work and the third was paid a total of \$1,400.

Aware of the \$1,700 per employee threshold for Social Security and Medicare withholdings, the family assumed correctly that they were not required to withhold any taxes from the employees' wages. Unfortunately, they were not aware of the unemployment tax thresholds.

The Law

Unemployment insurance is a state-managed fund designed to provide financial assistance to employees who have been "let go" from their job due to no fault of their own. It is funded through payroll taxes imposed on employers who cross the following thresholds:

- **Federal Unemployment Tax (FUTA)** If the *combined* wages of all employees is more than \$1,000 in a calendar quarter, the family will have federal unemployment liability of 0.8% on those wages (caps at \$56 per year, per employee).
- **State Unemployment Tax** Same as FUTA except the percentage ranges from 1% to 4.025% -- depending on the state (This tax also caps, but the cap varies by state). While most states have the same \$1,000 wage threshold as FUTA, some are as low as \$500.

The Mess

Since the family wasn't required to withhold any taxes from their temporary nannies' paychecks, they incorrectly assumed that they had no tax obligations. They never reported hiring and paying wages to any employees and did not pay any unemployment taxes. Four months later, the nanny who made \$1,400 was let go from her permanent position with another family and filed for unemployment benefits.

The unemployment benefits claim required that she list all previous employers over the last 2 years and the wages she was paid at each place of employment. Completing the claim honestly, she included the family who paid her \$1,400.

The Mess (Cont.)

In processing the claim, the state found no record of a wage report, unemployment tax return, or tax payment filed by the family for the quarter in which the nanny worked for them. Following standard procedure, the state sent a tax return and payment delinquency letter which included penalties and interest to the family.

The family was completely taken aback to receive a letter from their state indicating that they had a liability to report the wages paid to their temporary nanny and to pay unemployment taxes. They contacted Breedlove & Associates for advice and guidance on how to reconcile the notice.

Note: The amount of unemployment claims processed by our company on behalf of our clients has jumped 300% in the last 6 months – this is an increasingly common phenomenon.

The Outcome

We informed the family that federal and state unemployment was due on all nanny wages once the combined pay surpasses \$1,000 in a quarter. We helped them sort through the notices, prepare retroactive tax returns, and get all late filing fees waived. Unfortunately, the family had already filed last year's personal federal income tax return and had to pay a CPA to amend their tax return – which was more than the unemployment tax and our fees combined.

How the Whole Thing Could Have Been Avoided

The family made an honest mistake due to lack of knowledge. Well-intended families are frequently tripped up by the nuances of paying their employees legally which is why education is so important in this industry. If you suspect that one of your clients has or could be in a similar situation, mentioning the reporting thresholds may save them time and money while adding valuable tax expertise to your placement.

As always, we're happy to provide your families with a complimentary consultation and walk them through their obligations as a household employer.

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