

# The Legal Review

Sharing Case Law that Affects the Household Employment Industry

A Complimentary Resource from  
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In an effort to 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 and Unpaid Unemployment Tax: *State of Massachusetts vs. Family*

A family employed a full-time nanny earning \$600 per week. Her payroll was set up legally – with all appropriate taxes withheld and remitted according to state and federal law.

The family also used the services of a “sitter” who watched their children on nights and weekends as needed. The sitter earned about \$300 per quarter (roughly \$1,200 for the entire calendar year). Since she earned less than the 2008 social security & medicare threshold of \$1,600 (2009 threshold is \$1,700), the family was not required to pay any social security and medicare taxes for this employee. However, the family mistakenly assumed that the threshold applied to all household employment taxes. As a result, they did not report her wages to the state Department of Labor and Workforce Development nor did they pay any unemployment taxes on her wages.

### **The Law**

If a family pays total gross wages of \$1,000 or more in a calendar quarter to any number of household employees, they are required to pay both the federal and the state unemployment tax for ALL employees with wages in that calendar year. (Note: In some states the quarterly wage threshold is as low as \$500).

While it may seem silly to have to report wages on a casual babysitter or temp nanny, the law was designed to ensure that workers are financially protected if unemployed. With unemployment offices around the country under severe financial strain due to massive layoffs, enforcement of this law is being taken very seriously – even among relatively small offenders like household employers.

### **The Mess**

At the end of the year the family did not have a need for the sitter anymore and discontinued using her service. The sitter – feeling financial stress after losing income from another family as well – filed an unemployment insurance claim with the state in order to help her make ends meet while she looked for work.

As always, the state unemployment office sent a letter to 1) notify the family that their employee had made an unemployment claim, 2) verify duration of employment and compensation, and 3) verify that the employee had indeed been terminated due to no fault of her own.

In addition, the state unemployment office notified the family that they had failed to report this employee's wages or remit the proper unemployment taxes.

## ***The Outcome***

The family was forced to amend their quarterly unemployment insurance returns for all four quarters of 2008. They also had to prepare a W-2 for the sitter (in addition to their full-time employee), as well as correct their Schedule H to reflect two employees rather than one.

The family also had to pay back unemployment taxes plus penalties & interest. Without penalties and interest, the actual unemployment tax obligation would have only been a few dollars per quarter. With penalties and interest – and the cost to amend returns – the total employer cost became a few hundred dollars per quarter. In addition to the financial punishment, the family had to spend several dozen hours of precious free time dealing with the legal cleanup.

Once back taxes had been paid, the casual babysitter was able to get her unemployment benefits.

## ***How the Whole Thing Could Have Been Avoided***

Had the family known the law regarding unemployment taxes, they could have easily – and very affordably – added the sitter's wages to the existing quarterly wage report. With heightened attention on unemployment tax collection, it's important for household employers to understand how this law might affect them. Feel free to invite your families to call us for a complimentary, no-obligation phone consultation. In about 10 minutes, we can assess their situation and give them comprehensive financial and legal guidance. Whether they sign up with our service or not, we'll make sure this kind of situation never blindsides one of your clients.

**If you have additional questions, please call 888-BREEDLOVE (273-3356) or visit [www.breedlove-online.com](http://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*