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**PAYROLL TAX RELIEF
FOR HOME CARE/HOME HEALTH AGENCIES & CAREGIVERS**

By Victor Sy, CPA, MBA

Government agencies such as the EDD (Employment Development Department of the State of California) and the IRS have **stepped up their audits of entities treating workers as independent contractors** instead of employees. They have been particularly active in examining home health, home care, nursing registries, and other sectors of the health care industry.

A typical worker in the health care industry is an employee who should be paid wages that are subject to federal & state withholdings. Unfortunately, most caregivers are treated as independent contractors. Fortunately, the State of California provides relief for domestic workers with Unemployment Insurance Code Section 687.2 which provides a probable “out” from the strict categorization of workers as employees (toward independent contractors) – but only if **all of the following factors exist**:

1. There should be a **signed contract** between you (employment agency) and the worker (caregiver) that should specify all of the following:
 - A. That the agency assists the caregiver in securing work,
 - B. That the agency is paid a referral fee, and
 - C. That the worker is free to sign with other agencies.
2. The worker is **free to inform the agency of his/her own personal restrictions** on hours, location, condition or type of work that he/she will accept and that he/she is free to reject or select any offer.
3. The worker is **free to renegotiate fees with the patient**.
4. The worker should **not** receive any training; however, it is permitted to provide a voluntary orientation regarding administrative & operating procedures, relationship of the parties, and contract provisions.
5. The worker does **not** receive any direction, control, or supervision from the agency with respect to the manner & means of performing the work; however, the following actions are permitted:
 - A. Informing the worker about services to be provided & conditions of work specified by the patient.
 - B. Contacting the patient to determine if he/she is satisfied with the agency’s service (but it is not okay to use this contact to discipline or train the worker, or improve the worker’s performance).
 - C. Informing the worker of a new referral.
 - D. Asking the worker to inform the agency if he/she is not able to perform the work.
6. The agency should **not** provide tools, supplies or equipment to the worker.
7. The agency is **not** obligated to pay the worker & the worker is not obligated to pay the agency if the patient fails or refuses to pay.

8. The relationship between the worker and the patient may be [terminated by the worker or the patient](#) but not by the agency.
9. Payments can be made to either the worker or the agency. Any payments made to the agency should be deposited to a [separate trust bank account](#) from which payments to both the worker & the agency should be paid. Do not pay the worker from your general or operating account. The use of a trust account is crucial to winning a worker reclassification audit. Read our separate article on trust funds.
10. Remember the magic words: [control and trust account](#).

As you can see, it is tough to comply with all of the above requirements. If you lose a worker classification audit, the [IRS and EDD](#) will assess you for employer taxes that should have been paid and employee taxes that should have been withheld. Add penalties and interests- for all three years – and it would be a miracle for your business to survive such an assault. If the business cannot pay total assessments, both government agencies then go after “responsible persons” - you, the officers, check signers, and any person who has authority to decide who gets paid first.

If you treat your workers as independent contractors, you have to seriously think of [converting](#) them to employees, but not at the end of this year. [Timing](#) for the conversion is critical. Wait for next year to avoid taking conflicting positions in the same year. Explore the feasibility of closing your current entity and opening a new one. This time, do it right. Treat workers as employees. Companies who are able to survive competition as employers stay in business longer than entities that treat workers as independent contractors who fall by the wayside after payroll audits. You don't need EDD or IRS problems while you run your business.

What you need is an [immediate plan of action](#). The best time is before the end of the year, so you can implement your plan at the beginning of the following year.

If you own a home care or home health business, feel free to bring this letter to your lawyer who can prepare or revise your current contracts.

Good day.