

Why Hire From an Agency?

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One of the greatest long-term needs of older adults and those with chronic illnesses is for in-home, custodial care services. These in-home workers make it possible for people with functional limitations to remain at home in a comfortable, familiar environment. Home health aides provide a wide range of assistance with activities of daily living (ADLs), such as bathing, dressing, grooming, assisting with ambulation or transferring, toileting, feeding and providing medication reminders. In addition, home health aides help with instrumental activities of daily living (IADLs), such as shopping, meal preparation, making medical appointments, transportation, laundry and companionship.

While it is true that most people would prefer to remain in their own homes, there are circumstances in which care in a residential or nursing facility is more appropriate. The biggest proportion of people who utilize home health aide services are those who need several hours per day of assistance. Due to the cost and the increasing shortage of home health aides, many families seeking to hire in-home staff turn to private individuals rather than working through an agency. While at first glance this seems reasonable, it can also cause numerous problems and create unexpected liabilities for the family, who becomes the employer.

Tax Issues:

As a private employer, the individual or family is required to pay Social Security, unemployment and payroll taxes. Many home health aides will represent themselves as independent contractors, ostensibly relieving the hiring individual of these tax obligations. However, it is the responsibility of the hiring individual to be sure that the aide truly is an independent contractor, and is therefore paying their own taxes. In many instances, the aide will not meet the legal criteria as an independent contractor. If the aide has not met his or her tax obligations, this responsibility falls to the employer. This can be a serious obligation because it may involve interest on back taxes, civil fines and the possibility of criminal penalties. Potential private employers should seek the advice of a labor lawyer to assure appropriate hiring practices with respect to federal tax laws.

Case Example:

Mr. L hired a home health aide for his mother on the basis of a recommendation from a neighbor who also employed this individual. Mrs. L needed help because of a minor stroke that left her unsteady on her feet. Initially, Mrs. L only needed four hours of help per day to assure that she had a bath, that two meals were prepared and that the weekly shopping was completed. Occasionally, the aide also accompanied Mrs. L to some of her many medical appointments.

As time went on, Mrs. L continued to have minor strokes that left her increasingly debilitated. After 18 months, Mrs. L was quite incapacitated and had lost her ability to speak. At that point, the family decided to ask the aide to live in full-time and provide total care to Mrs. L. This relationship was a very loving one and lasted until Mrs. L passed away.

Because the aide had given up all of her other clients to care for Mrs. L full-time, she had no other immediate employment when Mrs. L died. Since she needed income to support her family, the aide filed for unemployment benefits. It was at that point, that the IRS became aware of the employer and filed a lawsuit for back unemployment taxes, penalties and a fine. The family did not understand their responsibility as an employer and found themselves in a legal action that took over two years and many thousands of dollars to resolve.

Workers' Compensation and Liability Issues:

As the employer, the individual or family paying for the private home health aide would be held liable for any work-related injury that occurs on the job. This can include the cost of all medical expenses and any disability payments that might become applicable. Since the home-care industry is noted for work-related injuries, this can be a huge risk, especially if the caregiving tasks include lifting, transferring or bathing. There are also risks related to communicable diseases if the aide does not abide by universal precautions that are required by all licensed agency personnel.

Furthermore, the employer retains any liability that arises out of an injury to the person being cared for or any other person on the premises. If the home health aide were to cause an accident, for example, in which other family members suffered any harm or losses, the employer would bear the full responsibility for all costs and compensation.

Abuse and Exploitation:

Unfortunately, there is the potential for both physical abuse and financial exploitation when work is being done on behalf of a frail, functionally limited, and often cognitively impaired individual. While most individuals who become home health aides do so out of a desire to help others and to contribute to the community, there will always be those who see this type of work as an opportunity to take advantage of someone. This becomes especially easy when the aide and the recipient of care are isolated in a private home setting with little or no supervision.

Agency Supervision:

A licensed home care agency has a responsibility to provide ongoing supervision for their employees. This includes helping the aides to understand the changing needs of clients, assuring the proper limits of care according to the practice acts of the various levels of professionals, and mediating difficult relationship issues. Providing supervision is often as important for the aide as it is for the family. Home health aides often work with very challenging situations in the isolation of the private home situation. There are often issues of different cultural and faith traditions, different expectations about personal schedules, eating preferences and expectations. An agency supervisor can help to clarify the roles of the home health aide, and the expectations of both worker and care recipient. Furthermore, the agency can support the aide in setting appropriate limits on the types of care that can be provided. For example, an older adult might expect an aide to help with dressing changes or services or care that is legally the responsibility of a licensed nurse.

In situations in which there are personality issues because of cognitive changes or a history of challenging relationships, the agency supervisor is available to provide guidance and support to both staff and care recipient. This can be very fragile, especially if there is a lack of trust or behaviors that are strange to the home health aide. The support of a supervisor can help the aide understand that this is part of the disease process and cope with behaviors so that the aide and the client can have a successful relationship. Often, supportive supervision is the key to making a challenging situation work.

The employer, whether it is a private individual or an agency, has a great deal of responsibility in hiring and managing a home health aide. These include financial, legal and governmental regulations. When a family is ready to hire home health aide services, they need to make a basic decision about the source of such assistance. This decision needs to take into consideration the type of help needed, the financial and tax implications, the need for supervision and the relative vulnerability of the person receiving the care.

If the family is unwilling or unable to assume the full range of responsibilities, they would be better off working through an agency. If the family chooses to hire privately, they need to consult a lawyer and an accountant to assure that they make proper arrangements for all of their obligations. In addition, they need to stay involved in the relationship to assure proper care and a mutually supportive relationship.