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PRODUCT & SERVICE GUIDE

What the Domestic Worker Bill of Rights Means to Accountants

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What began as a modest bill in the 2010 New York state legislature has swelled into a full-fledged movement. As of this writing, 3 states – New York, Hawaii and California – have passed formal Domestic Worker Bill of Rights (DWBOR) legislation protecting household employees and 10 more states have bills currently under consideration.

Most experts believe that domestic worker legislation will pass in some form in most states within the next couple of years.

Even in states where a bill doesn't yet exist, the movement has gained traction among workers and stimulated an outcry for basic employment rights. A large workforce that has been quietly operating in the shadows for generations is now pushing its way into the limelight. Certainly, this has implications for tax professionals.

About the DWBOR Legislation

The primary thrusts of the legislation are 1) wage and hour protections such as minimum wage, overtime and paid time off, and 2) formal employer communication around potentially-abusive aspects of employment – e.g. compensation agreements, hourly pay tracking, formal paystubs, pay frequency and termination.

To be clear, many of these basic employment protections have been covered by the Fair Labor Standards Act since 1938. But, up until the New York passage in 2010, there were very few statutes at the state level that recognized and protected domestic workers.

Notably, neither current nor proposed DWBOR legislation call for any changes to the payroll tax system for household employers. The federal and state employer obligations have not been part of the discussion, except to the extent that it has brought attention the industry's poor compliance rate. Most experts estimate that roughly 4 out of 5 families pay their employee illegally – either misclassifying them as an independent contractor or simply paying under the table.

As a result, core worker protections and benefits like Social Security, Medicare and Unemployment Insurance are not available to many domestic workers. The lack of these financial safety nets, combined with heightened awareness of worker rights created by the DWBOR, has led to a growing demand for legal pay.

The “off-the-books” culture is changing.

And we anticipate that it will be further fueled by two other major market forces: 1) proposed Immigration Reform bills, which affect many domestic workers and mandate that they show proof of work history and tax payments in order to gain provisional citizenship status, and 2) the aging of the population and the resultant growth of in-home senior care.

What does it all mean to tax professionals?

As the industry marches toward legitimacy, more and more families with domestic workers will be confronted with compliance as a condition of employment. In turn, more and more tax professionals will be confronted with advising clients on this portion of their tax situation.

From both a tax and a labor law perspective, it's very important that legal pay be addressed at the time of hire. The law requires that taxes be withheld, reported and remitted throughout the year. In addition, the Domestic Worker Bill of Rights requires clear communication of compensation, formal paystubs, and in some states, obtaining a Workers' Compensation insurance policy and/or a Disability insurance policy.

These employer obligations need to be handled properly from day 1 or else the family is exposing themselves to financial and legal risk. Most families are under the

impression they can drop this on their CPA at tax time and all will be fine. Unfortunately, by then, chances are they will have made numerous tax and labor law mistakes that will be costly and time-consuming to resolve. Additionally, they will probably have overlooked numerous opportunities to save money through dependent care tax breaks and non-taxable forms of compensation. Handled correctly, the tax breaks can offset most – if not all – of the employer tax cost.

The Opportunity

We believe tax professionals will see the Domestic Worker Bill of Rights movement as an opportunity. By proactively addressing these issues with their household employer clients, they will be helping their families 1) eliminate risk from audits and labor disputes, 2) save money, and 3) ensure that their worker gets the benefits and protections she deserves.

Families, generally ill-equipped to address all the payroll, tax and HR aspects of employment, want and need strong guidance in this area – at the time hire, before they've made expensive mistakes.

It's the kind of stewardship that is the hallmark of the profession.

About Stephanie Breedlove

Stephanie is the VP of Care.com HomePay, Provided by Breedlove. [Care.com HomePay](#) strives to offer everything busy families need, including tax preparation and filing, payroll management, HR and labor law guidance and expert support and advice. Stephanie received her BBA in Finance from the University of Texas and an MBA with concentrations in tax and marketing from the University of Houston and began a successful career as a financial analyst and consultant with Andersen Consulting. Today, Stephanie and the Care.com HomePay team have helped more than 55,000 families comply with the law.

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