

Wealth Manager

■ PRESERVING WEALTH ■ MANAGING THE RISK

WHEN HOME IS WHERE THE EMPLOYEES ARE

Clients who employ domestic help need to clarify interpersonal boundaries and professional expectations—or face serious problems. ■ ANDREW McELWEE

For most people, the twin challenges of managing professional and personal risk are separate and distinct. Clients who rely strongly on domestic help are not most people, however. They retain personnel like housekeepers and cooks who work inside their homes or those who regularly come and go, such as drivers and nannies. This creates a host of personal and professional threats that are fraught with far more judgment-clouding emotion than you would find in a commercial employment setting.

For instance, when a domestic steals or damages property as a result of recklessness or incompetence, it's not an impersonal "inventory shrinkage" issue; it's a loss of both a deeply valued family treasure and trust. Matters can be made even worse should the family show slap-of-the-wrist lenience after deciding it values the unremorseful employee more than the lost object. On the flipside, there is the family member, houseguest or senior staff member who treats a domestic in an unfair, discriminatory or hostile manner. Victims of this sort of mistreatment may have to choose between lodging a complaint with a boss who is close to the offender or suffering in silence. This reality leaves many domestic employers blindsided by employment practices lawsuits.

Additionally, there is the temptation some domestic employers feel to use an on-call domestic as a stand-in for less present or reliable family and friends. This emotional dependence can lead to all sorts of problems. The employee who enjoys a bit too much implicit trust may feel entitled to be habitually late, always duck out early, or remain perpetually on a break while other—resentful—personnel take up the slack. Maybe the chosen one has been caught for the umpteenth time making unauthorized use of the family pool, the sumptuously stocked walk-in fridge, or in-home theater—and inviting unannounced guests to share in the fun.

Or perhaps it's the needy employer who presses the indispensable employee to provide special help—"Can you check in on my sick aunt across town on your way home?"—without acknowledging that the extra effort deserves extra compensation. (This may help explain why 90% of respondents to a 2007 Household Worker's Rights Coalition Survey reported they did not receive extra pay for overtime.) Either way, the employer/employees involved are behaving more like a dysfunctional family than a professionally run household.

To ask a domestic to play the role of a paternal disciplinarian or unlicensed Dr. Phil is to endow them with a tremendous amount of power. At best, such misplaced confidence puts the staffer in an uncomfortable, no-win situation, such as having to declare a side in a family conflict. At worst, the employee may worry about eventually being “wrongfully dismissed” by a family that suddenly chafes at being served by someone so well briefed on its business.

Notably, power vacuums can be as dangerous as power imbalances. An affluent homeowner may likely expect two beloved co-workers to settle disputes without formal mediation. But when a personal assistant breaks off a relationship with the gardener and is forced to repeatedly spurn his continued advances; or when the rejected gardener makes sexually offensive remarks about the assistant to other staff and family, ignoring the situation and hoping it will blow over is the worst possible course.

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The soap-operatic dangers associated with employing domestics are many and move in all directions. Always, however, risk mitigation hinges on creating clear interpersonal boundaries and professional expectations that sharpen the naturally blurry, gray lines between personal and professional.

Good risk management of domestic employees begins with good new-hire screening practices. Here again, the danger is that a family's positive feelings about a candidate will take the place of hard due diligence. Indeed, a recent Chubb Insurance Co. survey of 600 domestic employers found that half did not conduct background checks prior to hiring. Often, a family that is relying on a third-party placement firm will assume the recruiter is doing background checks. But unless that's explicitly promised, don't count on it! In an employment market where well-qualified and well-documented recruits can be hard to find, a don't-ask-don't-tell mentality toward candidates can prevail. Fortunately, it's not hard to find security firms that specialize in such background checks. Most qualified insurance professionals should be able to provide recommendations. Better security outfits will pre-screen an applicant's employment and criminal history and conduct first-round interviews. They will also instruct families to speak with candidates only at a public location and to never use their real name.

Any employment offer should include a detailed job description outlining what will be required of the employee. Over time, the description should be revised to include any new duties, and all staff and family members should be apprised

of the changes. Moreover, employment should not begin until the would-be hire's I-9 visa and immigration status are determined. Nor should the employer make the mistake of thinking that hiring someone who isn't lawfully sanctioned to work in the United States is a protection from being sued. Labor laws apply to all domestic workers—regardless of race, gender or immigration status. Finally, new hires should also sign confidentiality agreements that safeguard family privacy both during and after their employment.

Once on the job, a human resources manual can be a vital risk-mitigation tool. It should spell out rules of engagement between family, employees and guests. What, for example, are a live-in employee's house privileges and restrictions when hosting an overnight guest? The manual should formally define the general parameters and protocols of the employer/employee relationship with the greatest possible specificity. And when informal exceptions arise—say, inviting the butler to dine with

family—they, too, should be understood as such by all. (“Your birthday is tomorrow. Let's serve you for a change.”)

Beyond keeping boundaries and expectations un-muddled, HR manuals should break down important safety and security practices to which employees in areas as different as the kitchen, the garage or the nursery should adhere. That information should be backed up with formal safety training wherever possible. Instruction might be as simple as detailing the right back-saving way to move furniture when vacuuming to how to use the meat-slicing machine or handle common, but corrosive cleaning products or reach up to dust a ceiling fan. These are not the minor exposures they may seem at first glance. The Occupational Safety and Health Administration reports 86% of domestics don't get such instruction, and that 63% define their jobs as hazardous.

The list of subjects to be included in a domestic-employee HR manual can seem endless. Compensation, benefits and performance evaluation policies should be among them. So should legal limits on work hours, break requirements and personal/holiday time. Any grounds for immediate termination should be clearly stated here, too, as should the steps by which employees will be reprimanded and eventually released if emergent patterns of problem behavior are not properly modified. A number of off-the-shelf software tools or professional consultants make it easy to create a human resources manual from a boilerplate template. From there, the employer's attorney or insurance broker can lend more specific advice to help customize the final draft.

After good screening, a clear job description and comprehensive HR manual, use of a time clock is one of the most effective means of managing domestic staff relationships. It clarifies when an employee's time and service is, or is not, compensable. Similarly, to avoid confusion about whether an employee has been paid for all hours, cash compensation should be forbidden, and all check-driven payroll meticulously recorded. Live-in employees should also be advised of where and when they have the expectation of privacy inside the home. They should know, too, where and when not to intrude in the private life of their employer. For example, don't enter the master suite after 8 p.m. or before 7 a.m., unless called.

12 Ways to Start the Conversation

If you have clients who are employing domestic workers, here are some risk-preventive questions you need to ask them:

- ❑ Do you conduct formal background checks of prospective hires?
- ❑ What precautions do you take to keep applicants from knowing who you are and where you live during the screening/interview phase?
- ❑ Are all new hires provided a detailed job description that is regularly updated to reflect changes in duties?
- ❑ Has the visa and immigration status of every prospective new hire been determined prior to making an offer of employment?
- ❑ Did you know that all fair labor laws apply to employees regardless of their immigration status?
- ❑ Do you have a human resources manual, and does it note general conditions of employment and rules of interaction with family, guests and co-workers?
- ❑ Are all employees required to sign a confidentiality agreement with clear financial deterrents for disclosure?
- ❑ Will your insurance respond to privacy breaches and defend a family reputation threatened by employee action or allegation?
- ❑ Is your personal liability coverage able to address claims of wrongful termination, sexual harassment and discrimination?
- ❑ Do you use a time clock to track hours, always pay by check and carefully document payroll transactions and insurance obligations?
- ❑ Have you considered how your auto policy will (or won't) cover an accident involving an employee driving one of your vehicles?
- ❑ When you travel abroad, are you inclined to bring employees with you, and, if so, what contingencies have you made should they have a medical emergency?

Often the most valuable and vulnerable property an affluent person has is the family reputation. As such, the penalty for breaching a confidentiality agreement should far exceed any financial gain an employee might derive from leaking (or making a veiled threat to leak) potentially embarrassing personal information. Notably, some insurance will even cover the cost of defending that reputation from unauthorized disclosures.

It's also wise to consider latent exposures concealed in a domestic's everyday activities. For example, are there employees who use the homeowner's vehicles for tasks like shopping or after-school pickup? What is their driving history? What auto insurance do they have? In the event of an accident while driving the employer's vehicle, how will the family's auto coverage respond if theirs doesn't? Should a childcare provider have a medical emergency while traveling abroad with family, what treatment, evacuation and insurance response could the family offer? Even if an employee stays put, thorough consideration must be given to the possibility of a homegrown work injury. Depending on state laws and the hours of work, worker's compensation and disability insurance obligations may apply.

The affluent homeowner who employs domestics should have employment practices liability coverage that can respond to wrongful termination, sexual harassment and discrimination claims. To reduce both the chances of litigation and confusion about job expectations when several domestics are on payroll, a clear top-down, bottom-up, chain-of-command should be established. In that way, staff policies can be communicated and complaints discreetly reported and handled without retribution against the complaining party. Swift action should also be taken to change offending behavior. Once corrective avenues have been exhausted, the employer must act deliberately and dispassionately to structure and communicate terms for a lawful severance as worked out in advance by a qualified attorney.

To the untrained employer's eye, the time, expense and effort required to manage domestic staff can seem cost-prohibitive. Nothing could be further from the truth. Paying more to find employees, compensating them fully and properly, maintaining safe, secure, fair working conditions, and insuring them (and your clients) against employment-related risks will pay for itself many times over.

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