



**A**dmit it. You know you can't do it all on your own. Most of us need help around the house and ultimately wind up employing gardeners to rake our leaves, mow our lawns or clean our gutters. Or we need caregivers for young children, senior adults or other family members and housekeepers to save the day. Unwittingly, we become small-time employers of a team of assistants or, to use the shortcut phrase, we become "household employers." By engaging the services of others to help around the



# Help Around the

# HOUSE

## What it could cost you

By Phyllis Horn Epstein

house, a household employer may be required to withhold and report taxes. It is important to be aware of the various reporting requirements to the IRS and Social Security and avoid the significant penalties for noncompliance.

Failing to withhold properly can result in liability for back taxes and for civil and criminal penalties. Employment taxes, particularly those that are withheld from an employee's wages, are considered trust-fund taxes. These are funds held by the em-

ployer in trust for the employee, with the expectation that they will be paid to the government. This relationship of trust gives rise to fiduciary responsibilities — and liability for failure to pay.

Many high-profile careers have been derailed because of the failure to withhold employment taxes, including Zoe Baird, nominee to become U.S. attorney general, and Bernard Kerik, former New York City police commissioner and nominee to head the U.S. Department of Homeland Security.



**First**, the behavioral control test: The more control you have over how a worker performs his or her work, the more likely the person is an employee. Behavioral control is demonstrated by directing when and where to work, what tools and equipment to use, what assistants may be hired, where to purchase supplies or other services, what work must be performed by the individual rather than delegated, what order or sequence of work to follow and the level of training provided by the employer to do the job.

**Second** is the financial control test. The more control over the business relationship, the more likely an employer/employee relationship exists. Specifically, the courts will look to whether the worker owns and uses his or her own equipment, whether the person is paid a regular wage, whether he or she can realize a profit or loss and whether his or her expenses are reimbursed.

**Third** is the relationship test. The existence of a written contract describing the working relationship, the permanency of the relationship and the provision of work benefits may have some bearing. However, a written contract as an independent contractor will not prevail if the relationship is in actuality an employer/employee relationship.

So, for example, Nancy comes to your home five days a week to care for your infant and does light housework. You provide all equipment and supplies she might need and give her specific instructions. Nancy is an employee. But if you take your child to Nancy's home five days a week for child care, Nancy is not your employee.

In another example, Matt mows your lawn on Thursdays. He works for Matt's Garden Care. Matt brings his own lawnmower and hires his own workers. Matt is not your employee.

And in a third example, Busy Bee Service Agency arranges for Roberta to attend to

## Are you an employer?

Engaging the services of others for work in the home may or may not create an employer relationship. In the alternative, the plumber you hire or the landscaper who cuts your lawn is simply an independent contractor. The Internal Revenue Code tells us that an employer/employee relationship exists where you have "the right to control and direct the individual who performs the services, not only as to the result to be accomplished by the work but also as to the details and means by which that result is accomplished."

Several common-law factors have been developed by the courts that shed some additional light on how the relationship will be regarded. And while no single factor is controlling, the critical factors fall into three general tests.



