



Senator Liz Krueger's

Guide to Employing a Nanny and Other Full-Time Domestic Workers



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May 2011

Dear Community Member,

Many of my constituents have chosen to hire full time nannies or other domestic workers for their families. Some people are unaware, however, that when they hire domestic workers, they become employers, subject to the same rules and regulations of the Federal and New York State governments as any other employer and business. These regulations can be incredibly complex and are difficult to navigate even for a professional accountant.

Often I receive calls and letters from constituents who are facing stiff penalties over violations of rules they either did not know existed or had thought they had addressed. One such constituent owed over \$40,000 to the Workers' Compensation Board because she mistakenly assumed the company administering her nanny's paychecks also took care of her workers' compensation insurance obligations.

Most people who hire domestic workers are honest citizens who want to do right by their employees but simply do not have the time or expertise in labor and tax law to fully understand their obligations. Seeing this as a common issue for my constituents, I have sought to compile all pertinent information related to hiring domestic workers in an easy-to-understand way. I have included information on protecting your employees and yourself, and the recently enacted Domestic Workers' Bill of Rights.

I would like to thank the New York State Department of Labor, the State Department of Taxation and Finance, the Office of the Business Advocate at the Workers' Compensation Board, and Park Slope Parents for their assistance in creating this guide. I hope you find it informative.

While my staff and I have done our best to ensure the information contained in this guide is accurate and up to date, the laws can change at any time. I recommend you check with the agencies listed in the back of this guide, or other knowledgeable professionals, to ensure that you are complying with all the latest laws and regulations.



Sincerely,

Liz Krueger
 State Senator



Getting Started:

- Since you will be entering into an “employer-employee” relationship, you must first obtain a Federal Employee Identification Number (**EIN**). You can obtain your Federal EIN:
 - Online (www.irs.gov/businesses/small/),
 - Through the mail (Federal Form SS-4, Application for Employer Identification Number), or
 - By calling the IRS Business and Specialty Tax Line at **(800) 829-4933**.

- You must verify that the domestic worker you wish to employ is eligible to work in the United States. Fill out federal **Form I-9** from the United States Citizenship and Immigration Services (<http://www.uscis.gov/files/form/i-9.pdf>).

- After you get your EIN, you must register as an employer with the NY State Department of Labor or NY State Tax Department. Employers may register by:
 - Filling out a **Form NYS-100** (http://www.tax.ny.gov/pdf/current_forms/wt/nys100/pdf) and mailing it to:
 New York State Department of Labor
 Registration Subsection
 State Office Building Campus
 Albany, NY 12240
 - Calling the Department of Labor at 888-899-8810 or (518) 457-4179
 - Calling the Tax Department at (518) 485-6654
 - Registering online at <https://applications.labor.ny.gov/eRegWeb/eRegInitialPart1.html>, or
 - Faxing **Form NYS-100** to (518) 485-8010.

- All employers must report to the NY State Department of Taxation and Finance certain identifying information about each newly hired employee within **20 days** of the hire date (the first day that compensated services are provided by your employee). This information includes:
 - Employee name,
 - Employee address.
 - Employee Social Security Number,
 - Employer name,
 - Employer address,
 - Employer Identification Number, and
 - Whether dependent health benefits are available to newly hired employees (effective July 15th, 2011).

- You can provide new hire information online (<http://www.nynewhire.com/index.jsp>) or by submitting a copy of the employee's federal **Form W-4** to:

New York State Department of Taxation and Finance
New Hire Notification
PO Box 15119
Albany, NY 12212-5119
Fax: (518) 320-1080



Tax Responsibilities:

Now that you've registered as an employer, you must be aware that you are responsible for paying various payroll taxes. When you hire an employee, you are subject to the laws requiring the withholding of Federal Social Security and Medicare taxes, as well as Federal and State income taxes. You are also responsible for paying unemployment insurance, workers' compensation and disability insurance (if applicable).

Federal Taxes:

- All Federal taxes, including income, Social Security, Medicare, and Unemployment must be paid annually on Schedule H of your Federal income tax return (**Form 1040**). Social Security/Medicare payments include both the employer and employee shares.
- You are not required to withhold federal income tax from wages you pay to a household employee. You should withhold federal income tax only if your employee requests it and you agree. If you agree to withhold federal income taxes from their wages, have your employee fill out a **W-4 Form** (available at www.irs.gov). If they do not fill out a **W-4 Form**, withhold Federal taxes as if they were single with no withholding allowances. For further information, please consult the IRS's *Employer Tax Guide* (http://www.irs.gov/publications/p15/ar02.html#en_US_2011_publink1000202368).
- Although you are not required to withhold income tax on wages paid to a household employee, you are liable for your household employee's Social Security and Medicare taxes if you pay any employee cash wages that equal or exceed the annual threshold. For the 2011 calendar year, the threshold is \$1,700.
- For **Social Security taxes**, both the employer and employee are responsible for paying their shares. For the 2011 calendar year, the employer's Social Security tax rate is 6.2% of wages paid and the employee's Social Security tax rate is 4.2% of wages paid. The employee's share of Social Security tax is withheld from their wages. You are responsible to pay the employer's share.
- For **Medicare taxes**, both the employer and employee are responsible for paying their shares. For the 2011 calendar year, the employer's Medicare tax rate is 1.45% of wages paid and the employee's Medicare tax rate is also 1.45% of wages paid. The employee's share of Medicare tax is withheld from their wages. You are responsible to pay the employer's share.

- You are also responsible for paying the **Federal unemployment tax** if you pay your household employee at least \$1,000 in a calendar quarter (a period of 3 consecutive months). The tax rate is .8% after a federal credit on the first \$7,000 of cash wages. As of July 1st, 2011 the tax rate decreases to .6%.
- After the end of the calendar year, you provide your employee with a **W-2 Form** showing total income and tax withholding, and file a **W-3 Form** with a copy of the W-2 with the Social Security Administration.

New York State Taxes and Obligations:

Unemployment Taxes

- You are responsible for paying the **New York State Unemployment Tax** if you pay your household employee at least \$500 in a calendar quarter. However, you may also volunteer to pay into the unemployment system on behalf of your employee if you pay less than \$500 per calendar quarter.
- Liable employers are required to report their payroll and pay unemployment insurance tax each calendar quarter using **Form NYS-45**. The quarterly filing dates are:

<u>Calendar quarter</u>	<u>Due Date</u>
January – February – March	April 30
April – May – June	July 31
July – August – September	October 31
October – November – December	January 31

Form NYS-45 can be filed and paid online (www.tax.gov/online/bus.htm) or by mail.

- Unemployment insurance taxes are based only on the first **\$8,500** in wages per employee. For example, if you pay your employee \$20,000 a year, you would only pay unemployment insurance tax on \$8,500 of those wages.
- Your unemployment insurance tax rate is computed annually based on several factors including:
 - Amount of time you have been subject to unemployment insurance law,
 - Timeliness of your quarterly tax reports,
 - The prompt payment of your taxes, and
 - The balance in the State Insurance Trust Fund (an insolvent Trust Fund may negatively affect your tax rate).
- After you register as an employer with the NYS Department of Labor, you will be sent a notice that includes your unemployment insurance tax rate. You will use this rate to calculate your unemployment insurance tax to be paid on **Form NYS-45**.
- Additionally, the Department of Labor also has a personalized web page for all New York State Employers where you can access a wide range of information on your account, including your current unemployment insurance tax rate. The website is: <http://labor.ny.gov/ui/employerinfo/employerhomepagelanding.shtm>.

- If you no longer employ a full-time domestic worker and do not expect to hire someone else, be sure to contact the Department of Labor's **Liability and Determination Section** so that your account can be closed. Their number is **(212) 266-5325**.

New York State and New York City Income Taxes

- You are not required to withhold New York State or city income taxes from wages you pay to a household employee. You should withhold income tax only if your employee requests it and you agree. If you agree to withhold New York State and/or New York City income taxes, have your employee fill out **Form IT-2104** to help determine how much New York State and city income tax to withhold from their pay. For more information, please consult Publication **NYS-50**, *Employer's Guide to Unemployment Insurance, Wage Reporting, and Withholding Tax*.
- If you and your household employee agree to withhold State and City income taxes, be sure to report and also document this quarterly on **Form NYS-45**. In addition, if you withhold \$700 or more during a calendar quarter, you must also use **Form NYS-1** to remit this tax due.



Workers' Compensation Insurance:

- If you employ one (or more) household employee(s) who work(s) for you 40 hours or more per week or lives in your home, you are subject to the **Workers' Compensation Law** and the **Disability Benefits Law**. Workers' Compensation and Disability Insurance allows for employees injured on the job to receive assistance through the employer's insurance policy while they are unable to work. It also protects the employer from liability for on-the-job injuries which result in employee disability or death. If you are subject to the law, you must obtain Workers' Compensation and Disability insurance via a private insurance company or through the **New York State Insurance Fund**. It is estimated that premiums for employers of household workers range between \$400 and \$600 a year.

Information on how to obtain workers' compensation insurance can be found at <http://www.nysif.com>.

Payroll Services and Record Keeping

Payroll Services

- Many employers outsource some or all of their payroll and related tax duties to third party payroll service providers. They can help assure filing deadlines and deposit requirements are met. Much of what has been discussed thus far can be handled by these service providers. But remember, employers are ultimately responsible for the payment of federal and state income tax withheld, unemployment taxes, and both the employer and employee portions of Social Security and Medicare taxes.

Record Keeping

- Keep copies of your federal **Schedule H** and any state employment tax forms you file, including related federal Forms **1-9, W-2, W-3, W-4**, and state Forms **NYS-1** and **IT-2104**, if applicable. You must also keep records to support the information you enter on the forms you file.



Penalties:

Failure to Report Newly Hired or Rehired Employees and/or Failure to Provide Required Information

- **\$20 x** the number of employees not reported
- **\$20 x** the number of false or incomplete reports filed

Failure to Report State Income and Unemployment Taxes

- Failing to file a quarterly **Form NYS-45** could result in a penalty of **\$1,000**. The Department of Taxation will send you a notice of your failure to file and give you 30 days to submit Form NYS-45 to avoid paying a penalty. If you submit the form within 30 days after the Tax Department notifies you of the failure to file, this penalty will be abated. However, you will be subject to a penalty for failure to pay taxes shown on the return.
- Any person who fails to file, with the intention of avoiding payment, is guilty of a misdemeanor and subject to a fine of up to **\$10,000**.
- The penalty, under section 581.2(b) of the Unemployment Insurance Law, for failure to file a return is **5%** of the unemployment insurance contributions due for each month the return is late, up to **25%**. The penalty may be no less than **\$100**.
- If you contest a penalty assessed against you or you disagree with your unemployment insurance tax rate or claim judgment, you may formally request a hearing within **30 days** of receiving notification with an administrative law judge. Send a written letter to the office that issued the determination.
 - If you are dissatisfied with the judge's ruling at the hearing, you then have **20 days** to appeal to the Unemployment Insurance Appeal Board provided you appeared or were represented at the hearing. Appeals may be sent to:

<p>Appeal Board PO Box 15126, Albany, NY 12212-5126</p>
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Failure to obtain Workers' Compensation and Disability Insurance:

- Failure to obtain Workers' Compensation and Disability Insurance can carry significant fines. The Workers' Compensation Board (**WCB**) has a specific procedure in dealing with employers without coverage, and it is important to fully understand this process in order to avoid cumbersome fines.
 - To ensure that all employers are covering their employees, the WCB gathers information from various agencies to establish a database of all businesses in New York, including individuals who employ domestic workers.
 - Once the database is established, it is updated by workers' compensation coverage information sent to the WCB by insurance carriers.
 - The WCB is notified whenever an insurance policy is written, modified, or canceled by an insurance carrier.
 - If the WCB notices that an employer does not have coverage for a period of time, it will send out a written notice to the employer requiring information on how the employer is complying with the mandatory coverage provision of the law—if the employer has secured coverage or is exempt from the law.
 - If no response is received, the employer will be levied a **\$2,000** fine for every **10-day** period of non-coverage, up to **\$72,000** for the year.
 - Once the WCB levies penalties, the employer has **30** days from the date of the initial penalty to appeal the decision. Information on how to appeal can be found on the back of the penalty notice.
 - If the employer has still not paid or responded to the penalty notice after roughly three months, it then goes to a collection agency.
 - If the collection agency is unsuccessful in collecting the penalty, the WCB will issue a judgment against the employer.
 - If you have received a notice of penalty that you are contesting, contact the **Advocate for Business, Neil Gilberg**. The Advocate can work with you to either eliminate or significantly reduce the amount owed. The Advocate can be reached at **(800) 628-3331**.



Domestic Workers' Bill of Rights:

On August 31st, 2010 the “Domestic Workers’ Bill of Rights” was signed into law by Governor David Paterson. The intent of this law is to provide domestic workers, including nannies, basic labor protections afforded to traditional employees, including overtime pay and guaranteed time off (domestic workers who work on a part time, casual basis, such as babysitters, are not covered under this law). The law went into effect on November 29th, 2010. Provided below is a summary of the main provisions of the law, including your responsibilities as an employer.

- Domestic Workers are legally entitled to:
 1. Pay of at least minimum wage (**\$7.25/hr**)
 2. Overtime pay at 1½ times the basic rate of pay after **40 hours** a week, or **44 hours** a week if the worker lives in the employer’s home
 3. One day (24 hours) of rest every seven days, or, if the employee agrees to work that day, overtime pay for the entire day’s work
 4. At least **three** paid days off after one year of work for an employer
- Employers who hire a domestic worker are legally required to:
 1. Provide the minimum benefits listed above
 2. Pay your worker(s) weekly
 3. Not deduct pay from your employee’s pay without written permission (you may not make deductions from pay for breakage of property or other such reasons)
 4. Keep detailed payroll and time records of the hours your employee worked, wages paid, and any deductions made from wages
 5. Give your employee written notice about your policies on sick leave, vacation, personal leave, holidays, and hours of work
 6. Give your employee a written notice that includes their regular and overtime rates of pay and their regular payday
 7. Not retaliate against your employee for complaining to you or the Department of Labor

Resources:

Forms and Publications

- **Form NYS-45:** Quarterly Combined Withholding, Wage Reporting, and Unemployment Insurance Return
http://www.tax.ny.gov/pdf/current_forms/wt/nys45_fill_in.pdf
- **Form NYS-100:** NYS Employer Registration for Unemployment Insurance, Withholding, and Wage Reporting
http://www.tax.ny.gov/pdf/current_forms/wt/nys100.pdf
- **Form SS-4:** Application for Employer Identification Number
<https://docs.google.com/viewer?url=http%3A%2F%2Fwww.irs.gov%2Fpub%2Firs-pdf%2Fss4.pdf>
- **Form I-9:** Employment Eligibility Verification
<http://www.uscis.gov/files/form/i-9.pdf>
- **Form W-2:** Wage and Tax Statement
<https://docs.google.com/viewer?url=http%3A%2F%2Fwww.irs.gov%2Fpub%2Firs-pdf%2Fw2.pdf>
- **Form W-4:** Employee's Withholding Allowance Certificate
<https://docs.google.com/viewer?url=http%3A%2F%2Fwww.irs.gov%2Fpub%2Firs-pdf%2Fw4.pdf>
- **Form W-3:** Transmittal of Wage and Tax Statements
<https://docs.google.com/viewer?url=http%3A%2F%2Fwww.irs.gov%2Fpub%2Firs-prior%2Fw3--2011.pdf>
- **Form IT-2104:** Employee's Withholding Allowance Certificate (NYS)
http://www.tax.ny.gov/pdf/2011/fillin/wt/it2104_511_fill_in.pdf
- **Form 1040:** U.S. Individual Tax Return
<https://docs.google.com/viewer?url=http%3A%2F%2Fwww.irs.gov%2Fpub%2Firs-pdf%2F1040.pdf>
- **Form IA 98:** Notice of Unemployment Insurance Tax Rates
<https://docs.google.com/viewer?url=http%3A%2F%2Fwww.labor.state.ny.us%2Fformsdocs%2Fui%2Fia98.pdf>
- **NYS Publication 27:** What You Need to Know When Hiring Domestic Help
<http://www.tax.ny.gov/pdf/publications.multi/pub27.pdf>
- **IRS Publication 926:** Household Employer's Tax Guide
<https://docs.google.com/viewer?url=http%3A%2F%2Fwww.irs.gov%2Fpub%2Firs-pdf%2Fp926.pdf>

- **Publication NYS-50:** Employer's Guide to Unemployment Insurance, Wage Reporting, and Withholding
http://www.tax.ny.gov/pdf/2006/wt/nys50_506.pdf
- **Workers' Compensation Board Employer's Handbook**
<https://docs.google.com/viewer?url=http%3A%2F%2Fwww.wcb.state.ny.us%2Fcontent%2Fmain%2FEmployers%2FEmployerHandbook.pdf>

Government Websites and Phone Numbers

- **Internal Revenue Service**
www.irs.gov
www.irs.gov/businesses/small/ (Employer Identification Number)
IRS Business and Tax Line: **(800) 829-4933**
- **NYS Department of Labor**
www.labor.ny.gov/

<https://applications.labor.ny.gov/eRegWeb/eRegInitialPart1.html>
(Registering as Employer)

<http://labor.ny.gov/ui/employerinfo/employerhomepagelanding.shtm>
(Personal UI Employer Account Information)
General Business Inquiries: **(518) 457-2635**
- **NYS Department of Taxation and Finance**
www.tax.ny.gov/
Personal Income Tax Inquiries: **(518) 457-5149**
Withholding Tax Information: **(518) 485-6654**
- **Workers' Compensation Board**
www.wcb.ny.state.gov
District Office Service Center: **(800) 877-1373**
Bureau of Compliance: **(866) 298-7830**
Advocate for Business: **(800) 628-3331**
- **NYS Insurance Fund**
ww3.nysif.com
Business Office Location: **(212) 587-5435**

Other Resources

- Park Slope Parents offers a wide array of information on hiring a nanny on the books, how to interview nannies, what to pay nannies, and assistance with producing paychecks for nannies. They are an invaluable resource for anyone considering hiring domestic help.
www.parkslopeparents.com