



# LONG-TERM CARE: RECENT REGULATORY CHANGES & THE IMPACT ON YOUR CLIENTS

Understanding & Guiding Clients  
Through the Dramatic Cost Implications





PRESENTED BY

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PROVIDED BY BREEDLOVE

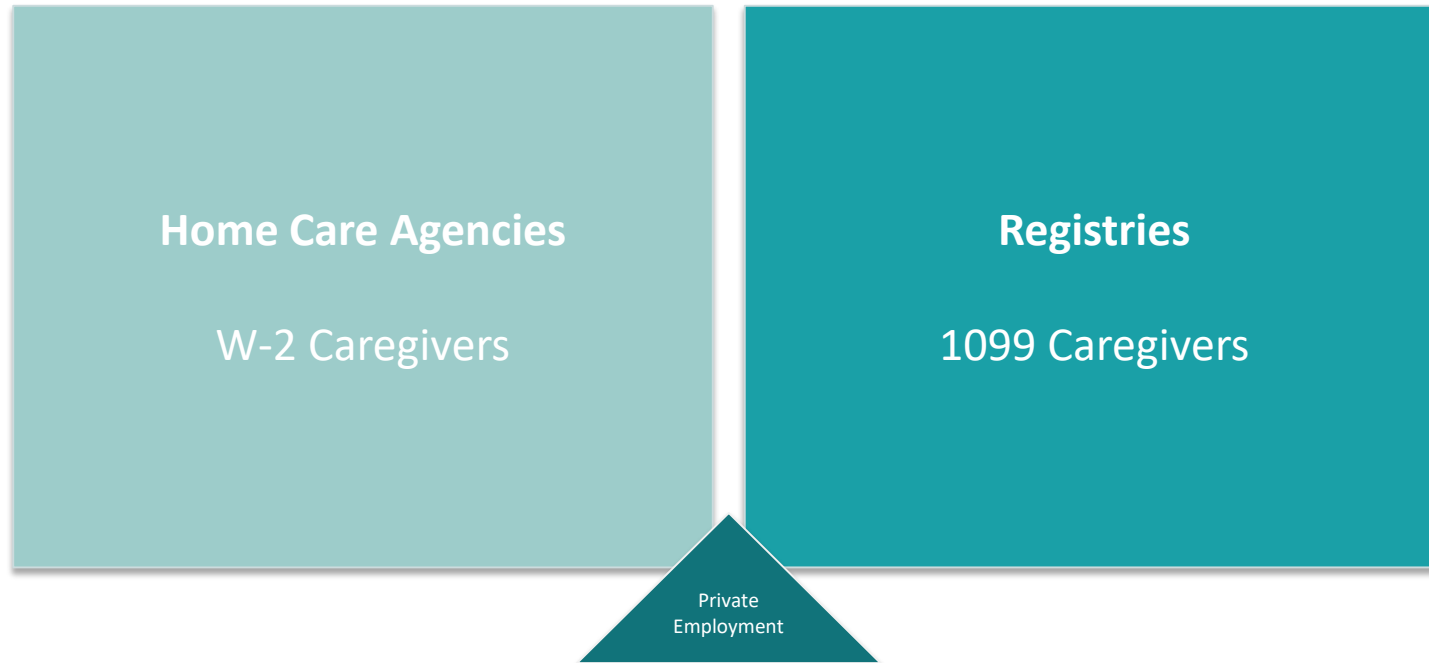
EMPLOYING CAREGIVERS

# AGENDA

- 1 Recent Changes & Impact on Clients**
- 2 Helping Clients Avoid Tax & Legal Issues**
- 3 Helping Clients Save Money**

TRADITIONAL SENIOR CARE DELIVERY

# Pre-2016 Non-medical in-home care options



REGULATORY CHANGES

# DOL REPEAL OF COMPANIONSHIP AND LIVE-IN EXEMPTIONS FOR 3<sup>RD</sup>-PARTY EMPLOYERS



## REGULATORY CHANGES

# Repeal of Wage & Hour Law exemptions for agencies



Third-party caregivers can no longer be classified as “companions” or “live-ins” to avoid min wage and overtime costs.

Now, they give high-hour cases a choice: revolving door of caregivers to avoid OT or pay higher hourly rate

**Does not work very well for Alzheimer’s/Dementia patients because they typically need more stability/continuity**

## REGULATORY CHANGES

# Repeal of Wage & Hour Law exemptions for agencies



Federal law allows families that employ directly (1<sup>st</sup>-party employers) to leverage these exemptions to avoid overtime costs

**IMPACT:** Depending on number of hours, type of care and state of residence, savings can be \$20,000-\$70,000 per year.

REGULATORY CHANGES

# INDEPENDENT CONTRACTOR vs. EMPLOYEE: NARROWED DEFINITION AND EXPANDED ENFORCEMENT





## REGULATORY CHANGES

# Worker classification



DOL and IRS view virtually all domestic workers – including caregivers – to be employees

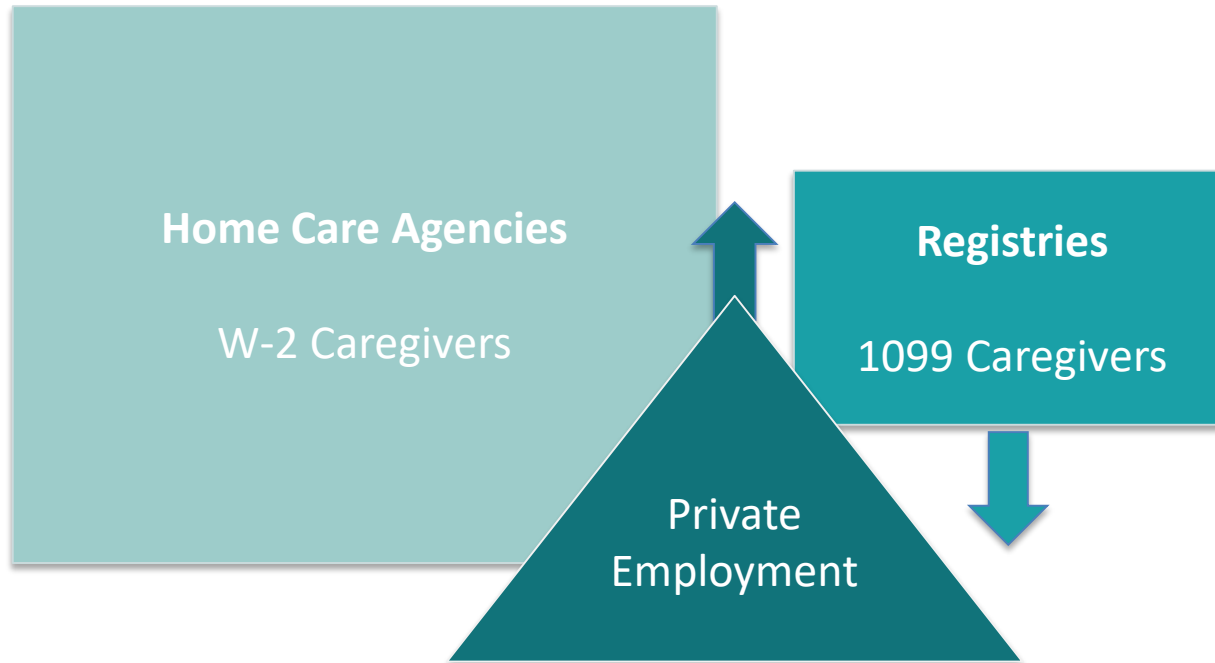
Employer is either the agency or the family – usually the family

Worker misclassification is considered felony tax evasion

**IMPACT:** Registry model under attack. Most are converting to home care agency model or placement/referral agency model

FINANCIAL IMPACT

## 2016 & Beyond: Cost and classification are pushing many high-hour, cognitive cases to privately employ



LEGISLATIVE CHANGES

# DOMESTIC WORKER BILL OF RIGHTS LEGISLATION



## LEGISLATIVE CHANGES

# Domestic Worker Bill of Rights



State labor law protections and worker remedies in key states

- In addition to national Fair Labor Standards Act (FLSA)

Growing awareness of rights among caregivers

Not just a tax filing issue anymore

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# HOUSEHOLD EMPLOYMENT BASICS



## HOUSEHOLD EMPLOYMENT BASICS

# The “Nanny Tax” Obligations\*

(IRS Publication 926)



1. Withhold payroll taxes (FICA and all applicable state taxes) from the employee's pay
  - State and Federal income taxes are optional
2. Pay employer taxes (FICA, FUTA, SUTA and all applicable state taxes)
3. File state and federal tax returns and remit employer and employee taxes throughout the year (1040-ES/Schedule H process, NOT 940/941 process)
4. At year end, provide employee with Form W-2, file Form W-2 Copy A/Form W-3 with the Social Security Administration and file Schedule H with their federal personal income tax return

**Note:** \*If pay any individual **\$2,000** or more in a calendar year (2018 is **\$2,100**)

## HOUSEHOLD EMPLOYMENT BASICS

# The Labor Law Obligations

(Fair Labor Standards Act & State Law)



Household employers may have several major employment law responsibilities:

- Written Wage Notice or Employment Agreement
- Detailed pay stubs
- Minimum Wage
- Overtime
- Mileage/Expense reimbursement
- Workers' Compensation insurance
- Disability Insurance
- Paid Time Off/Paid Sick Leave

**Note:** State-by-State requirements can be found at [www.myHomePay.com](http://www.myHomePay.com)

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# HELPING CLIENTS AVOID TAX & LEGAL RISK





## HELPING CLIENTS AVOID TAX & LEGAL RISK

# Worker Misclassification



- IRS has consistently ruled that domestic workers should be classified as “employees” rather than independent contractors
  - The **right** to control what, when, where or by whom the work is performed
- New DOL factors narrow IC status
  - “Permanence” and “Economic Dependence”
- DOL and IRS have teamed up to increase enforcement; household employment industry cited as key target
- Significant issue in senior care because most senior care “registries” have classified their caregivers as independent contractors for decades

## HELPING CLIENTS AVOID TAX & LEGAL RISK

# Procrastination



- Families think this is “tax stuff” so it can be handled at “tax time”
  - Failed to withhold taxes properly
  - Failed to file employment tax returns timely
  - Failed to handle Overtime properly
- Much less costly and easier to handle correctly at time of hire
- Complimentary SmartStart service for your household employment clients
  - Financial (ER taxes, tax breaks, budgeting, etc.)
  - Labor Law Guidance (applicable federal, state and local law)
  - Employment Contract Template (with assistance)
  - Tax Withholding Forms (W-4 etc)
  - Form I-9

HELPING CLIENTS AVOID TAX & LEGAL RISK

# Putting a Domestic Worker on the Company Payroll



- The IRS does not allow a personal, domestic employee to be paid through business payroll
- Tax deductions on business payroll require all employees to be “direct contributors to the success of the business.”
  - The IRS has ruled that domestic employees do not qualify as direct contributors
  - Therefore, including them on business filings is considered an illegal tax deduction
- Legally, it’s wise to keep separate for asset protection reasons

## HELPING CLIENTS AVOID TAX & LEGAL RISK

# Overtime



- Federal law says all “Non-Exempt” workers (protected class) must be paid time-and-a-half for all hours over 40 in a 7-day work week.
  - “Fixed Salaries” are illegal
- **Exception 1: Live-in workers**
  - Have to be paid for every hour worked, but hours over 40 do not have to be paid at 1.5x
  - *However*, some states have their own OT requirements for live-in employees
- **Exception 2: Companions**
  - “Fellowship and Protection”
  - Less than 20% of time spent on Activities of Daily Living (ADLs): bathing, dressing, meal prep, cleaning, etc.

**Note:** Some states require OT for ALL workers so this exemption does not apply everywhere

HELPING CLIENTS AVOID TAX & LEGAL RISK

# Workers' Compensation Insurance



- Helps with *medical expenses* and *lost wages* in the event of work-related injury or illness
- It is required for business employers in virtually every state, but household employers are exempt in about 20 states
- However, even if not required, families can be held liable
- Usually, WC can be easily obtained through homeowner's insurance agent. If not, we can help with a stand-alone policy
- Workers who accept benefits forfeit right to sue employer

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# HELPING CLIENTS SAVE MONEY



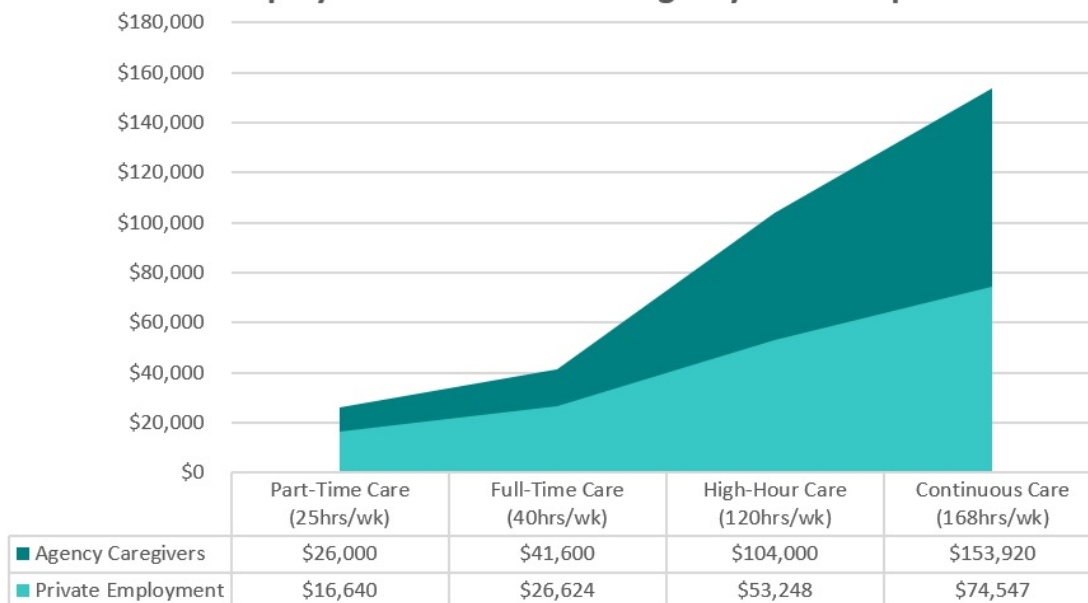
HELPING CLIENTS SAVE MONEY

# Private vs. Agency Caregiver?

- High-hour cases that require consistency of caregiver (i.e. Alzheimer's/Dementia) are finding it MUCH cheaper to hire privately



**Private Employment vs. Home Care Agency Cost Comparison**



## HELPING CLIENTS SAVE MONEY

# Sleep Time Exemption



- Federal 24-Hour Shift Law
  - Up to 8 hours of sleep time may be treated as non-compensable hours if:
    - Adequate sleeping facilities are provided
    - Continuous sleep for 5+ hours is possible, and
    - The Employee agrees to it in writing
- CA currently does not allow sleep time to be treated as non-compensable



HELPING CLIENTS SAVE MONEY

# Capitalizing on Long Term Care Insurance/VA Benefits



- Often overlooked
- Sometimes carry old provisions that require a Home Care agency
- If private employment, require payroll documents and activity logs (ADLs)

HELPING CLIENTS SAVE MONEY

# Tax Breaks

## Dependent Care

- FSA
- Tax Credit

## Medical\*

- Medical Expense Deduction
- Medical FSA

## Health Insurance Contributions

- Non-taxable compensation
- HI Tax Credit for Small Employers

\* Care must be prescribed by a licensed healthcare practitioner.



HELPING CLIENTS SAVE MONEY

# Non-Taxable Compensation

- Health Insurance
- College Tuition (up to \$5,250 per year)
- Public Transportation (up to \$255 per month)
- Parking (up to \$255 per month)
- Cell phone service (personal attendants only)



## EMPLOYING CAREGIVERS

# COMPLIANCE IS THE RIGHT THING (AND SMART THING) FOR BOTH PARTIES

1

### **Reduced Legal & Audit Risk**

Insurance against expensive fines and lawsuits from disgruntled employees

2

### **Tax Breaks**

Can offset most – if not all – of the employer tax costs

3

### **Employee Benefits & Protections**

Payroll taxes fund Social Security, Medicare, Unemployment, and Disability benefits,  
Payroll history required for loans/credit and health insurance subsidies

## EMPLOYING CAREGIVERS

# Resources

## Free Calculators at myHomePay.com

- Employer Budget Calculator
- Employee Paycheck Calculator

## Free SmartStart service for your clients

## Online library at myHomePay.com

- State-Specific Requirements
- Helpful Tips and FAQs

## Household Employer Tax & HR Experts

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# About Care.com HomePay<sup>SM</sup>

## A No-Work, No-Worry Solution to Household Employment Since 1992

- Accountable for all aspects of household employment payroll, tax and HR
- Serve all 50 states with guaranteed accuracy & timeliness
- All payroll and tax documents archived online for easy 24/7 access for Authorized Contacts (Accountant/Advisor or Family members)

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# THANK YOU

Should you have any additional questions, please reach out. We're here to help.



888-273-3356



[www.myHomePay.com](http://www.myHomePay.com)



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