

Worker Classification Law Clarification, Enforcement Benefits DCA Members

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Direct Care Alliance (DCA) members would benefit from the efforts of the National Private Duty Association (NPDA) to persuade the federal government to clarify and then enforce current laws that determine when a worker is an employee (and of whom), and when a worker is self-employed. NPDA efforts are aimed at making sure that both workers and those who hire them know, and thus can make informed choices about, their work-related tax responsibilities.

There are significant consequences (and costs) to whether a worker is classified as an employee or an independent contractor (self-employed). And in the current workplace, particularly for direct care workers, confusion abounds. There is a significant lack of knowledge about just what a worker's (or the worker's employer's) responsibilities are. Some of this derives from insufficient clarity, and a lack of compliance, with current worker classification rules. It is to the benefit of both direct care workers and the clients they serve that these laws—and the responsibilities they impose—are well understood, and complied with, by all.

The law in effect now requires each person who earns any form of compensation to pay income and so-called "payroll" (Social Security, Medicare) taxes on that compensation. For people who work for a company, those taxes are withheld (and forwarded to the government) by their employer. People who work for themselves must take care of paying their taxes—in the required amount and by the designated time—themselves. This includes not only income tax, but also Social Security and Medicare taxes—half of which are payable by the worker, and half by the employer.

Employers also pay workers compensation and unemployment taxes (which allow laid-off workers to qualify for unemployment benefits). Because of this, employees can benefit from workman's compensation if they are injured on the job. They can often also collect unemployment benefits if they are laid off. Self-employed persons do not qualify for these worker's compensation and/or unemployment benefits. Many employers also offer such employer-paid benefits as vacation and sick time, retirement plans, and in some cases, health insurance.

NPDA is not seeking to change the current test of whether a worker is an employee (and if so, who the worker's employer is). The test is called a "control test." It is applied on a case-by-case basis, and looks at the degree to which the worker's work activity is controlled by the person (or company) who pays him/her. Who issues the paycheck, who determines work hours, who determines the means and methods by which the work is performed are but a few of the 20 different "control factors" that make up the worker classification law.

Clarity in this law can only help. Rather than having to rely on an individualized analysis, workers, those who hire them, and companies alike will benefit from a more clearly-defined set of rules.

What are the consequences? Here's an analysis applicable to direct care workers.

First, someone must pay the required taxes. It will be either the worker him/herself, if he/she is a self-employed independent contractor; or the person who hires the worker. This could be a company, as is

the case when a direct care worker works for an NPDA company. Or it could be the service recipient—the senior citizen, or person with disabilities, who hires the direct care worker, or perhaps that person’s family.

If it’s a company that hire its workers as employees, the company withholds the relevant amount of income payroll tax. It pays half the worker’s payroll tax. It transmits these payments to the governments (federal, state and local). It also pays workman’s compensation taxes and unemployment insurance costs.

The control test often results in a determination that the direct care worker is an employee of the service recipient—the senior or person with disabilities, or his/her family. If so, the service recipient is responsible for withholding income and payroll taxes, paying the employer’s share of payroll taxes, and/or workman’s compensation and unemployment insurance.

If the person is self-employed (and that requires the worker to work in a way that avoids the control test resulting in the service recipient being deemed to be the worker’s employer), the self-employed person must pay income tax—usually quarterly, and adjusted to include payroll tax (100 percent of which is the responsibility of the self-employed person). The worker must him/herself send the money to the relevant governments (federal, state and in some cases local).

There are significant penalties for failure to meet this tax obligations.

In NPDA’s experience, a large number of private duty clients and even more direct care workers have no idea of these tax responsibilities. It is an unpleasant, unwelcome surprise when the IRS catches up with them, demanding back taxes (with interest and penalties) when the relevant taxes have not been paid.

When a direct care worker is choosing his/her work environment, he/she should consider the benefits of the employment relationship—many of the “savings” that appear to come with self-employment, or working through referral, are illusory. When the tax responsibilities are factored in, the employment status can be a better choice for both the worker and his/her clients.

NPDA believes the work environment for direct care workers would be substantially improved by clear, enforced worker classification rules. Clear rules that are well-known would benefit the industry in all respects. Companies would compete on a fairer basis. Clients would not be blindsided by discovering they may be characterized as employers for tax purposes. Workers would get to make an informed choice about whether to prefer the worker protections and benefits of employment, or the entrepreneurship—with all its benefits and burdens—of self employment. Clients will avoid the nasty and expensive surprise of discovering – if the control test as applied so dictates, that they, as employers, have tax-administrative responsibilities that come with hiring a direct care worker.

Thus, NPDA invites DCA to join them in lobbying for clear, enforced worker classification rules. We believe it is a position that will benefit us all.