

Kathleen Martin is an attorney with O'Donnell, Weiss & Mattei, P.C., and a newspaper columnist for The Mercury, which gave permission for this article to be reprinted.

April 20, 2014

Why it is dangerous to hire caregivers “under the table”

Anyone who has looked into hiring caregivers for an ill or elderly, frail loved one has probably been tempted to “hire” caregivers “under the table” since it seems less expensive. Sometimes this arrangement happens by chance, when what is seen as a viable short term “fix” turns into a longer term arrangement. It is often not until later when problems surface that turn the dream arrangement into a nightmare situation.

Caring.com published a recent article on “Why It Can Be Dangerous to Hire Caregivers Under the Table” (<http://www.caring.com/articles/hiring-under-the-table>). This is where you pay an independent caregiver in cash to care for a loved one, and there is no documentation of payments made as the caregiver does not wish to report the income. This arrangement *appears* to be less expensive than using caregivers from an agency, until it comes time to document the caregiving costs to qualify for Veterans Administration (VA) benefits (no adequate documentation is available) or to prove that the funds were not *gifts* if Medicaid is needed. There are also a host of other issues with this arrangement that many people do not take into account when first arranging for a private caregiver that is paid “under the table.”

A major issue is that when you hire a private in-home caregiver, the IRS considers that person your employee if you pay them more than \$1,800 in a calendar year. Therefore you are responsible for withholding and paying taxes, including income tax, Social Security, Medicare, and other state and local taxes, etc. If you fail to do so, you are defrauding the government of money, and you are operating illegally. You could be caught by the IRS (this is more likely than you might think), and you will be responsible for paying back taxes and penalties. Penalties can be steep if the discovery occurs after some time has passed.

It is also more difficult to verify that the caregiver does not have a criminal history or even has a valid driver's license; additionally, the caregiver may not have any valid experience with caregiving. An agency conducts background checks and uses verification agencies to confirm their results, something that is hard to do on your own. Furthermore, professional caregivers are usually licensed and bonded by their agencies. You do not need to worry as much about theft (a high risk among private caregivers), nor are disability claims as much of an issue. You can be liable if a caregiver is hurt on the job, and have little recourse if your loved one is abused or neglected other than to dismiss the caregiver (often a difficult task). You will need to manage the care, and deal with the consequences if the caregiver does not show up or quits unexpectedly. Your loved one could be suddenly without care, and handling the care can be up to you.

If you are thinking of hiring a private caregiver, or have one in place now, make sure that you utilize the services of an accountant and/or elder law attorney to make sure that you are meeting all of your responsibilities. Detailed guidance can be found at IRS Publication 926, the Household Employer's Tax Guide also.

Make no mistake that the decision to hire a friend, or some ladies from the church, to care for your loved one in the home is a dangerous undertaking when you are doing so without guidance and forethought. There are pitfalls you never even considered when you first envisioned this type of care plan. Looking at all aspects of the situation, not just the initial apparent cost, is very important.