

# Agency or Independent: Considerations in Hiring

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For aging adults with physical and cognitive limitations who wish to remain in the familiar environment of their own home, paid in-home care workers often provide the solution. Understanding the differences in care providers and the roles and obligations of hiring are essential in creating a positive experience for all involved.

In-home caregivers can provide a wide range of assistance including personal care needs such as bathing, dressing, supervision, help with toileting, to medication reminders and assistance with daily living activities, such as meal preparation, light housekeeping, laundry, transportation, and companionship. Those who are hiring paid workers to provide in-home care look for solutions from a variety of sources.

Being responsible for the care of a dependent or older adult is a demanding job that often involves many tasks. Choosing a full-service agency shifts the responsibility of care and liability away from the family and can provide respite from many of these demands.

Primarily because of cost considerations many families seeking to hire in-home help will turn to private individuals rather than hiring through an agency. At first glance, this may seem reasonable; however, this can cause numerous problems and can create unexpected liabilities for the individual who becomes an employer. Understanding responsibilities and employer obligations is essential.

## Tax and Wage and Hour Obligations

As a private employer, the individual is required to pay Social Security, unemployment, and Payroll taxes. As an employer wage and hours laws must also be followed. Often the in-home care providers will represent themselves as independent contractors, ostensibly relieving both themselves and the hiring individual of these tax and employer obligations. In many situations, the worker does not meet the criteria of an independent contractor. If the aide has not met his or her tax obligations, this responsibility falls to the employer. This can have serious consequences involving back taxes, civil fines, and the possibility of criminal penalties. Recent changes in minimum wage, overtime, and mandatory sick days create even more potential liability for the employer.

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## CASE 1

Mrs. S. was an 85-year-old widow who lived independently in a large condominium complex. Due to failing vision she was initially in need of assistance with grocery shopping, bathing, and some meal preparation. Occasionally, she needed to be driven to medical appointments. Her daughter hired a home care aide, who worked with other condo residents, and employed her on a part time basis. As time went on, Mrs. S. became increasingly frail and began to suffer memory loss. The family decided to employ the aide full time. This very loving relationship lasted until Mrs. S. passed away. In working for Mrs. S. fulltime the aide had given up all her part-time clients. Having no other immediate

(continued on page 2)

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employment, the aide filed for unemployment benefits. At this point the IRS became aware of the employer and filed a lawsuit for unemployment taxes, penalties, and fines. Additionally, the caregiver hired an employment attorney to help her become compensated for overtime and minimum wage violations. The family and mother's estate found themselves in a legal action that took many months and thousands of dollars to resolve.

### **Worker's Compensation, Disability and Liability Issues**

As an employer, the individual or family paying for private home care is held liable for any work-related injury that occurs on the job. This can include the cost of medical expenses, disability, and loss of income payments that might become applicable. Homeowners insurance is often limited in scope and can exclude direct care including tasks such as lifting, transferring, or bathing. It is essential to check homeowners' policies to understand the extent of coverage.

The employer also assumes liability that arises out of accident or injury to both the person being cared for and property. Further protections such as TB testing, influenza vaccines, and other precautions that can be provided by agencies are now the responsibility of the family/employer. Families who hire an independent caregiver are also vulnerable to theft, damage, or other losses incurred in their employment. Short of criminal prosecution, there is often little recourse. Should a family decide to hire privately, an employment application including a background check should be part of the hiring process.

## **CASE 2**

As a home care worker, Mary Jones had a history of back injuries from her years of assisting with the physical needs of stroke patients. Her back problems appeared stable from her last several years of employment with a cognitively impaired woman who required minimal physical assistance. Being very pleased with the love and compassion in which Mrs. Jones treated her mother, the daughter recommended Mrs. Jones to a friend whose father, Mr. H., had suffered from a minor stroke and the family did not want him to live alone. She happily accepted Mary as her caregiver for Mr. H. Initially, Mr. H. needed minimal physical care. As time went on he suffered several additional strokes which decreased his mobility and function.

Mrs. J. found herself increasingly assisting with his physical care. Transferring, dressing, and bathing put a particular strain on Mrs. Jones' back. Having become very attached to Mr. H., Mrs. Jones did not express her concerns to the family that hired her. One day, as Mrs. Jones bent over to assist Mr. H. her back went out and she was unable to straighten up. She managed to get to the telephone to call a family member to come over to assist. Mrs. Jones found herself with permanent back injuries.

The doctor told her she would not be able to work as an aide again. Mrs. Jones filed for worker's compensation and disability insurance. At this point, the government became aware of the employment situation and held the family responsible for medical expenses and disability coverage. The cost far outweighed expenses of working through an agency or getting the proper insurance coverage.

(continued on page 3)

## Abuse and Exploitation

With increased frailty, limited function, and memory impairment there is a greater potential for physical abuse and financial exploitation. While the vast majority of those who provide care for the elderly do so out of their desire to help others and provide the best care possible, there remains a small segment that use this opportunity to take advantage of this vulnerable population. When these older adults are isolated from regular contact with family or community there is often little or no supervision of workers. Screening and oversight of care is often neglected due to a combination of circumstances. Geographic distance and personal demands of family members, lack of expertise, and close ties which can form between aide and those receiving care all contribute to lack of oversight. Often families who hire individuals through informal channels are so grateful to have care provided, at a below market rate, they neglect doing basic screening and reference checks, not to mention criminal background checks and on-going monitoring. The naiveties of family members, who have little experience as an employer in these situations, make them vulnerable to being manipulated and exploited.

### CASE 3

Susan L. lives in New York while her widowed mother remains in California. When her mother suffered a stroke and wished to remain in her home, Susan realized that she would have to hire someone to assist. She felt fortunate when a neighbor's housekeeper recommended someone who was moving to California and was looking for a place to live and work. Susan met the prospective caregiver for a brief meeting before flying back home. Susan neglected to have the worker complete a basic employee application. Things seemed to be going well and Susan's mother became very attached to her caregiver. Several months later, when Susan came to visit her mother, she realized that she was physically and intellectually frailer. Susan learned that her mother had begun using the caregiver to assist in paying bills and other banking needs. At that point, she went through her mother's bank stubs and was shocked to find hundreds of dollars in cancelled checks to grocery stores and several thousand more made out to cash. When she confronted the caregiver, she tearfully explained that she had a "family emergency" and would pay it back. The caregiver left for a lunch break and neither she nor the money was ever seen again. When checking her address and telephone number on record they were found to be a disconnected number in an abandoned building.

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## Supervision & Monitoring

Supervision, monitoring, and oversight of employees can be the difference between a successful and disappointing caregiver relationship. When constraints of distance, time, expertise, or objectivity become too overwhelming, this role is often best provided by a trained experienced professional. An Aging Life Care Manager (ALCM) can provide this on-going supervision, either as an independent ALCM or through a small but growing number of agencies who have integrated these professionals into their delivery of in-home care. Duties can include matching caregivers by needed skills and personal qualities, helping aides to understand the changing needs of clients, providing proper guidelines for care, and mediating difficult relationship issues between families, older adults, and caregivers. ALCMs can assist in hiring caregivers through reputable agencies or in some cases coordinating with payroll companies, assisting with needed insurance, and background checks.

Not only does supervision provide benefits to the client and family, but support for the caregiver can assure their job satisfaction, which translates to a positive working attitude and less caregiver turnover. Providing care to an individual in their home can result in many challenges for caregivers. Professional oversight can clarify roles and expectations for both the care giver and the recipient. The Aging Life Care Professional can be particularly beneficial in providing guidance in situations where there are challenging personalities or behavioral issues due to both cognitive changes and other psychiatric symptoms. By providing tools for the caregiver to understand and respond appropriately to a variety of situations, the end result can be a successful partnering.

#### **CASE 4**

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Mr. and Mrs. Levy need assistance with most aspects of daily living in order to stay home. They depend on caregivers to help with all Mrs. Levy's personal needs (including bathing, dressing, feeding, and toileting) as well as assisting Mr. Levy with household duties. Their daughter, Linda, has been hiring caregivers through word of mouth. In the past six months Linda has hired at least ten different caregivers. Each time a new caregiver arrives Linda takes off work to train them. Her father complains that there is no one who knows how to cook, clean, or assist in an adequate manner. Finally, upon the recommendation of a coworker, she hired a professional Aging Life Care Manager who assisted in hiring caregivers. Before placing another caregiver, the Aging Life Care Manager went out and met with both Mr. and Mrs. Levy. She learned that Mr. Levy was unhappy because none of the aides kept house like his wife and he no longer felt like he was living in his own home. By going through Mr. Levy's daily routine, his wife's recipes, and learning about his other expectations, the ALCM was able to guide the caregiver she felt was best suited for this couple. With a few follow-up conversations and additional guidance, not only was Linda relieved of this duty, but the caregiver was able to form a mutually respectful relationship with this family. The caregiver enjoyed learning new recipes, but after she gained Mr. Levy's trust he began to enjoy some dishes that the caregiver had learned from her country of origin.

#### **Independent or Through an Agency.**

Hiring in-home care providers, on your own or through an agency, is not a decision to be taken lightly. Both the person who needs the care and the level of family involvement must be considered. How much time and responsibility the family is able to assume, as well as the type of help needed, the financial and tax implications, the need for supervision, and the vulnerability of the person receiving care must also be considered.

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