

Tax, immigration laws routinely ignored by employers

Second of two parts

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When Betsy, 16, babysits for the two Johnson boys after school, both she and the boys' parents are breaking the law. Betsy earns \$50 a week at her job, but neither she nor the Johnsons tell the tax people, and that's illegal.

Illegal and rampant. Babysitters by the thousands are being paid what amounts to cash under the table, and every time they earn more than \$50 from one family in a three-month period, that pay should have certain taxes and insurance withheld. There are forms to fill out and fines to pay if they aren't. If, that is, you get caught.

And that probably won't happen. Marcia Meyer, coordinator of the Child Development Programs and Educational Services of the Santa Cruz County Office of Education, said, "Many parents don't realize it's a requirement or they choose to overlook it. It's a difficult situation."

Meyer's office operates the Child Care Switchboard, a service connecting families with child-care providers, which includes family day-care homes, child-care centers and preschools, recreation programs and community activities, and what are known as in-home providers — a buzzword for babysitters.

Meyer said both parents and those who want to be on the

switchboard's free listing are told exactly what, by law, compensation for child care must include. The conversation is followed by a packet of clearly spelled out information sent by mail.

In-home providers who register with the center must apply to the switchboard, go through an interview, submit letters of recommendation and be subject to review every other year. It is the staff's hope that such people and their potential employers would also comply with their legal obligations regarding pay deductions.

But for many parents, just finding a reliable babysitter who is responsible and nice to their children is a job in itself. Many are tempted, Meyer said, to turn a

blind eye to the fact that they've become employers and are subject to government regulations:

- When a parent pays an in-home provider \$50 to \$749 per calendar quarter, they become an employer and must pay a part and withhold a part of the employee's wages for FICA (Social Security taxes).

- If a parent pays the in-home provider \$750 or more per calendar quarter, they must also register with the California Employment Development Department within 15 days after reaching the \$750 figure. EDD then gives the parents an account number to be used when paying state taxes each calendar quarter.

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The regulations

By JUDY BRILL
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Confusion abounds over which documents can and cannot be used to prove eligibility for employment. The "green card" — officially, the Alien Registration Receipt Card — is not only misnamed, it's also far from being the only acceptable proof of a person's identity and authorization to work.

The green versions were issued in the 1950s, and "for all practical purposes, there aren't any more around," said an INS

spokeswoman. The new National Identity Cards have "blue writing on a salmon background," she said; other cards have blue or black lettering on a white background.

The U.S. Department of Justice lists almost two dozen ways for a prospective employee to prove authorization to work, and employers may not specify which documents they will accept.

The following documents establish both identity and em-

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Employers, workers routinely ignore tax, immigration laws

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● When paying \$1,000 or more per calendar quarter, parents are required to pay the following state taxes through the EDD: Unemployment Insurance, Employment Training and 1 percent disability Insurance by taking deductions from the babysitter's pay.

● Under California law, the parent may also be required to

have worker's compensation — insurance to cover injuries and illnesses sustained on the job. It is up to the parent to check with his or her insurance agency.

For single working mothers who are paying up to 35 percent of their salary for child care, paying additional money and complying with government regulations may seem too tall an order.

The issue is that parents are

scrambling, Meyer said.

Parents try to do what's best for their child with what they can afford. Meyer said what's best and what they can afford can be two different things.

Full-time infant care costs \$125 to \$175 per week at a child-care center, and day care can range from \$2 to \$6 per hour. Babysitters usually cost \$5 to \$7 an hour.

This brings up a larger issue,

Meyer said. She said some babysitters are likely to be in this country illegally, but she was also quick to note undocumented workers are employed in a variety of jobs.

What's important to recognize with the issue of child care, she said, is that the situation for many parents and care-givers is that nobody really gets ahead.

Parents, unless they're making an excellent salary, must

stretch to pay a provider what amounts to a poverty wage. In doing so, their hourly wage is reduced to or close to poverty level.

Everybody is broke that way, Meyer said.

Information on withholding Social Security, including requests for forms is available from the Internal Revenue Service toll-free by calling 1-800-829-1440.

For information on state taxes and withholding Unemployment Insurance, Employment Training and Disability Insurance taxes, visit the Employment Tax Office at 2190 Soquel Ave., Santa Cruz, or call 464-6293 and ask for the EDD Household Employer's Guide.

The Child Care Switchboard can be reached by calling 688-8585.

What are the regulations?

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ployment eligibility:

- U.S. passport (expired or current).
- Certificate of U.S. citizenship (INS form N-560 or N-561).
- Certificate of Naturalization (INS form N-550 or N-570).
- Unexpired foreign passport, with I-551 stamp or attached INS form I-94 indicating unexpired employment authorization.
- Alien Registration Receipt Card with photograph (INS form I-151 or I-551).
- Unexpired Temporary Resident Card (INS Form I-688).
- Unexpired Employment Authorization Card (INS Form I-688A).
- Unexpired Re-entry Permit (INS Form I-327).
- Unexpired Refugee Travel Document (INS Form I-570).
- Unexpired Employment Authorization Document issued by the INS with a photo (INS Form I-688B).

Other proof of work authorization is possible when certain documents are presented in conjunction with other identification.

Acceptable as proof of iden-

tity: ● Driver's license with photo from a state or U.S. possession.

- Federal, state or local government identification card with photo.
- School ID with photo.
- Voter's registration card.
- U.S. military card or draft record.
- Military dependent's ID card.
- U.S. Coast Guard Merchant Marine card.
- Native American tribal document.
- Canadian driver's license.
- For those under age 18 unable to produce one of the above documents, a school record or report card; clinic, doctor or hospital record; or a day-care or nursery-school record.

Authorization to work is established if the above documents are produced together with:

- Stamped U.S. Social Security card.
- Certification of birth abroad issued by the Department of State (INS form FS-545 or DS-1350).
- Original or certified copy of a birth certificate from a state, county, municipal authority or outlying U.S. possession bearing an official seal.
- Native American tribal document.
- U.S. citizen ID card (INS form I-197).
- ID card for use of resident in the

United States (INS form I-179).

● Unexpired employment authorization document issued by the INS.

The INS is responsible for enforcing compliance by employers. The seeming ease with which Josephina Fernandez was able to work with forged Social Security numbers is surely becoming a thing of the past with the increasing reliance on computerization.

In 1988, the General Audit Program was initiated to help keep tabs on hiring policies. The INS enlisted the help of Dun & Bradstreet Corp., based in Manhattan, which has a database of 7.5 million employers nationwide. An employer can be fined for incorrectly filling out documents and for hiring illegal workers.

Fines are assessed by the INS.

According to figures from May 1988 to December 1992, GAP investigations have resulted in the following:

- Number of investigations and inspections: 58,967.
- Notices of intent to fine: 12,068; gross amount: \$63.7 million.
- Warning notices: 10,519.
- Final fines levied: \$23.4 million.
- Compliance rate: 89 percent.

Since enactment of IRCA, the following rules must be followed:

- When hiring most employees, employers must verify that they may work legally in the United States — file INS Form I-9.
- If a household employee earns \$50

Where the 'illegals' work

Duke Austin, an INS spokesman in Washington, D.C., said illegal hiring is most prevalent in small businesses, especially those that require low- or no-skilled labor, such as meat packaging, fish- and agricultural-processing plants, garment and textile manufacturers, construction firms, and hotels and restaurants.

Mark Wilcox, vice president at BCS Construction in Watsonville, said when someone comes in looking for work, they are given a work application to fill out. Applications are kept on file until workers are needed, then they're called for an interview. After the interview, the company contacts listed references and "calls around" to check on the prospective employee.

He said when undocumented workers come in, they take the

application but "we never see them again." He described these people as "a drive-by type of job-seeker."

"We haven't seen any (undocumented workers) in quite a while," Wilcox said, although he said the number of legal job-seekers has slackened off lately as well, from about three a week to maybe one.

As for laborers seeking day work who commonly gather at certain locations Wilcox said, "We don't hire them ... our insurance carrier would kill us."

Celia Organista, director of the advocacy agency Adelante, deals mostly with farm workers and their problems. She said the most common situation involves workers who are paid in cash, which provides no records. She said she sees a lot of people who suffer on-the-job injuries

who can't fill out the forms to get medical or financial assistance.

Mike Meuter, an attorney with the California Rural Assistance League in Salinas, said it's the smaller businesses that tend to hire unauthorized workers. Since IRCA went into effect, the bigger companies check potential employees' documents more carefully.

Meuter said a common complaint from U.S. citizens is that illegals are taking what few jobs are available these days, and what's worse, they're willing to work for lower wages and no benefits.

"I haven't seen any concrete proof," he said, "but these are jobs that the (mainstream) work force doesn't want anyway."

— Judy Brill

Steps to citizenship since IRCA

● Proof of residency since before Jan. 1, 1982, provides temporary legal U.S. residency;

● After 31 months, permanent residency will be granted to those who can prove an understanding of U.S. civics and history, and can communicate in English or have proof of completion of 40 hours of a 60-hour class in English;

● After a five-year period, if English communication skills

and knowledge of civics and history can be shown (if not shown previously), naturalization will be granted.

The easiest route to naturalization is through marriage: Those who marry a U.S. citizen can get permanent residency status and must wait only three years before submitting an application, proving the above skills and knowledge, and being sworn in as a citizen.

or more in a calendar quarter, Social Security and Medicare taxes must be paid — quarterly federal Form 942.

● IRS yearly W-2 forms (wage and tax statements), must be filed, along with Form 940, which must accompany the yearly federal unemployment insurance payment.

● Some states require that Worker's Compensation Insurance be paid through an authorized insurance carrier for workers with 40 or more hours a week.

● The employer must pay state unemployment insurance.

Some key exceptions are:

- Independent contractors — exempted from Social Security and Medi-

care tax payments. Independent contractors are employees who generally control their own schedule and oversee their work, such as a plumber or a carpenter. A 20-factor test has been developed by the IRS to determine status.

● Baby sitters under age 18 and those under age 21 employed in "casual" work, such as raking leaves and shoveling snow, are excluded from state unemployment insurance coverage.

● Independent contractors and workers who work sporadically in the home are among those the INS says do not need to prove work authorization. The exclusion stipulates, however, that the alien cannot be hired if it is known he or she is not

authorized to work in the country.

Noncompliance with these guidelines can result in the following actions:

● Failure to file Social Security and Medicare tax returns: Back taxes plus a penalty of up to 25 percent of the tax owed, with interest.

● Failure to file immigration forms: \$250 to \$2,000 for first offense.

● Filing late W-2 forms: from \$15 to \$50 for each employee.

● Failure to carry Worker's Compensation Insurance: up to 2 percent of employer payroll for period of non-compliance and possible prosecution for misdemeanor offense.