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Private Duty INSIDER

Strategies to improve productivity

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Wage-and-hour issues

Factors agencies must consider when preparing for pending wage-and-hour rule

If your agency decides it doesn't want caregivers to work more than 40 hours a week as a result of the new federal minimum wage and overtime requirements, it should consider having a brief conversation with another agency to help resolve staffing issues.

Telling your caregivers about opportunities for additional work elsewhere to make up those lost hours of pay could help your agency retain employees, believes Attorney John Gilliland of The Gilliland Law Firm in Indianapolis. Your caregivers would recognize that you're sympathetic to the financial issues you're causing them by complying with federal law.

(*see* ***Wage**, p. 8*)

Caregiver compensation

Payroll cards good option for paying caregivers, but restrictions apply

Agencies that compensate their caregivers using payroll cards can save time and money, but there are a few caveats to moving to a paperless payroll system.

While direct deposit has been around for decades as a way to eliminate check printing costs, more transient workforces frequently reject this option in lieu of paper checks because of a lack of a banking relationship.

(*see* ***Payroll**, p. 9*)

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might prefer less expensive care by having several caregivers who do not receive overtime pay.

- **Examine how changes will affect scheduling.** If an agency decides not to schedule caregivers to work more than 40 hours a week, it will take more time and effort to schedule, Gilliland says.

- **Make sure you understand how to properly pay for things such as employees' sleep and break time.** If your agency's approach is to limit the number of hours worked daily, be sure you understand the rules for sleeping and break time, Gilliland says.

One common wage-and-hour issue involves meal periods. Under federal law, a meal period is not working time if it's at least 30 minutes long and the employee is relieved of all duties, Gilliland says. But that's difficult for some live-in situations, where caregivers might eat meals with clients. Agencies should check applicable state wage and hour laws when it comes to meal periods, he advises. *— Josh Poltilove (jpoltilove@decisionhealth.com)*

What to say to clients, employees about companionship exemption's impact

After your agency decides how it will comply with federal minimum wage requirements, it should communicate that information to clients and staff, says Attorney John Gilliland of The Gilliland Law Firm in Indianapolis.

Explain what changes your agency plans to make in order to comply with the law — and reiterate that the Labor Department, not your agency, was the force behind the changes, Gilliland says (*See story, p. 1*).

For caregivers, consider saying in person that changes were required to "preserve" employees' income, he says.

If you plan to cut back employees' hours, make it clear to caregivers that they are valued. "This is not a personal situation, although they'll feel it personally," says Pat Drea, chief operating officer of Visiting Angels in Havertown, Pa.

In the event that employees need to find additional work elsewhere to make up for lost pay, ask that they work that around their current clients, Drea says.

Face-to-face communication is best for conversations involving the companionship exemption, says labor attorney Elizabeth Murphy in the Los Angeles office of Manning & Kass, Ellrod, Ramirez, Trester. Follow that up with written confirmation.

For clients, consider saying your changes were designed to hold down costs, Gilliland adds. Agencies also might want to provide information to clients about why hiring someone directly, rather than from an agency, might not be a good idea. *— Josh Poltilove (jpoltilove@decisionhealth.com*

Payroll

(continued from p. 1)

For about the past 10 years, payroll cards have been increasingly an option for this working population, and their use is predicted to rise by nearly 20% between 2010 and 2016, according to consulting company Aite Group in Boston.

The Federal Deposit Insurance Corporation (FDIC) reported that one in 13 households in 2013 did not have a bank account, and noted that nearly a quarter of the U.S. population was considered "underbanked" — meaning that these individuals held bank accounts but regularly used financial services outside of the banking system, such as payday loans.

Unbanked households, according to the study, are more likely to be young, low-income, non-Asian minorities. More than a third of unbanked individuals stated distrust of the banking system as the primary driver for bank avoidance.

"For a subset of caregivers who don't like banks — which is actually a large percentage — payroll cards give these caregivers the ability to carry around a Visa or MasterCard that is filled just like a bank account at the time of payroll," explains Michael McAlpin, the vice president of business development for Kinnser ADL in Austin, Texas, which produces private duty software solutions and support.

McAlpin says the company encourages private duty clients to move to payroll cards to increase efficiency and save on the expense of checks, which cost on average $1 per check plus shipping. For caregivers paid by check weekly, that can add up, he said.

"I view payroll cards as the holy grail of cards because of automatic refill and our ability to help employees save money on their paychecks, rather than going to a check cashing store," says Rick Holt, the CEO of Oregon-based TFG Card.

Holt said the company provides payroll cards free to its private duty agency clients. Caregivers have the ability to make one cash withdrawal free of charge each pay period and use their card just like a debit card.

TFG, which has between 60 and 70 private duty clients, makes its money on point-of-sale fees paid at stores by merchants for card use, as well as through withdrawal fees from out-of-network ATMs and add-on features such as online bill pay.

A little more than a year ago, Synergy HomeCare began using the TFG Card, testing it out at a Phoenix location, which employs about 200 caregivers, before offering the payroll card to non-banking caregivers at all of its franchise locations.

David Manbeck, the franchise business consultant for Synergy, says communication is key to the paycard's acceptance, starting with literature from TFG to help Synergy's corporate and franchise locations understand the pros of the card and the rules and penalties that could be associated with its use.

"The franchises worked to explain [to caregivers] the benefits, such as quicker access to funds," Manbeck said. "We had a small percentile of caregivers that were a little hesitant at first, but they saw the benefits [of the payroll card], tested the waters, and it was warmly welcomed."

Limitations of using payroll cards

Moving to payroll cards does come with a few restrictions. The Consumer Financial Protection Bureau, which has the authority to enforce violations of the Electronic Fund Transfer Act, cautions that employers who plan to pay via payroll cards must provide employees with a choice in their payment method and inform them of any fees associated with payroll cards.

In addition, employers must be sure that they are contracting with a payroll card issuer that provides employees with access to account history, limits liability for unauthorized use and responds to account error complaints.

"Businesses often prefer to use payroll cards because they save money by simply loading the card electronically instead of cutting a check," said Jeffrey Ruzal, a labor and employment attorney in the New York City office of Epstein Becker Green. "Employees, however, have been averse to payroll cards because of fees that have been deducted from their wages."

While card providers differ, nominal fees may be charged for cards themselves, withdrawals and use of non-network ATMs.

Since 2013, legislators in 17 states have introduced payroll card legislation. On Jan. 1, 2015, laws governing payroll cards will take effect in Illinois and Nebraska. New York Attorney General Eric T. Schneiderman has proposed the Payroll Card Act to address what he calls "shortcomings in payroll card programs" to protect worker rights and unfair wage deductions.

Although California legislators were among the first in the country to introduce payroll card bills, Gov. Jerry Brown vetoed the legislation, calling it overly restrictive. Likewise, legislation to regulate the use of payroll cards failed in New Hampshire.

In states without guidelines, Ruzal advises employers to minimize their risk of liability by offering employees a choice on their method of payment, thoroughly disclosing all fees, penalties and costs associated with the card and allowing employees the choice to end their use of the payroll card as their method of payment at any time.

Tips for using payroll cards

- **Do your research.** Know what the costs of the program will be, as well as penalties that can be incurred, Ruzal says. Agencies should also seek well-known and well-respected cards that have a wide ATM network. McAlpin recommends the TFG Card to private duty clients because there are no start-up costs or fees for agencies or caregivers. The American Payroll Association also maintains a list of recommended paycard providers at www.americanpayroll.org/pdfs/pto/bg_1404.pdf.
- **Check with legal counsel.** Make sure the payroll card provider is complying with state law and consider adding an indemnification clause in the contract to protect yourself from lawsuits over fees, suggests Ruzal.
- **Communicate and communicate some more.** "Like with anything, good communication is key," Manbeck says. "Start off early, with a target date [for implementation] way off in the future. You cannot communicate enough."
- **Offer signup bonuses.** Offer unwilling caregivers a signup bonus of $5 as an incentive to get on board, McAlpin says. — *Angela Childers (angela.childers@gmail.com)*