

DOMESTIC SERVICE

The domestic service exception covers the casual employment of individuals who sporadically, irregularly, or intermittently provide domestic service in a private home.

Sporadic is defined as “*occurring occasionally, singly, or in scattered instances.*” Intermittent is defined as “*coming and going at intervals: not continuous.*” To qualify for this exception, the work must not be regular or part of an on-going relationship. For example, a worker who cleans the home on a regular schedule would not qualify, but a worker who is just hired on just one instance would. Likewise, a nanny would not qualify but a periodic babysitter would.

Domestic services include work that is “*reasonably to be expected in the upkeep and maintenance of a residence and the land directly attached to the residence.*” Outdoor work can qualify as domestic service, if it is tied to regular upkeep and maintenance rather than construction.



INDEPENDENT CONTRACTORS

Independent contractors “*carry on independent business, contract to do a piece of work according to their own means and methods, and are subject to control only as to results.*”



While each case would be reviewed individually, some factors a judge would consider are:

- If the worker directs the order or sequence in which the work is to be done and determines the hours during which the work is to be done
- If the worker provides services only short-term
- If the worker supplies his own tools or materials
- If the work requires special skills
- If the worker makes services available to the general public
- If the worker works for a number of clients at the same time
- If the worker has an opportunity for profit or loss as a result of labor
- If the hiring party cannot assign additional projects without re-negotiating with the worker

POTENTIAL PENALTIES

As a general rule, it is unlawful to employ a foreign national while knowing that the foreign national is not authorized for the employment. 8 U.S.C. § 1324a. A violation of this law can result in a fine or even imprisonment if the employer engages in a pattern or practice of knowingly hiring unauthorized foreign nationals. 8 U.S.C. § 1324A. Additionally, an entity that hires an employee in the United States must look at the employee’s documents to verify that the employee is authorized to work in the United States. 8 U.S.C. § 1324A. Completing Form I-9 satisfies this requirement. Recent enforcement trends focus more on I-9 completion than knowingly hiring an unauthorized foreign national. Further, enforcement has focused on auditing I-9 files for large employers rather than small employers or homeowners.

Information provided by:

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THE CENTREVILLE LABOR

RESOURCE CENTER (CLRC) provides a way for those who are looking for work to connect with those who want to hire them. The CLRC does not screen workers or employers, but assumes that each is acting in good faith: that the hiring entity is accurately describing the work to be done and the worker presenting him/herself for the job honestly describes his/her skills and experience.

The CLRC does not check immigration status. It is the responsibility of the hiring entity...

- ...To determine if work documents are required and if so, to fill out all needed paperwork. This is accomplished by completing USCIS Form I-9.
- ...To report to the IRS payments greater than \$600 (over the course of a year) to an independent contractor. This is accomplished by completing an IRS 1099-MISC.

Individuals or businesses who hire CLRC workers have responsibilities under immigration law if the workers are considered employees. **There are two relevant exceptions to this requirement:**

- 1) Those hired for sporadic, irregular, or intermittent domestic service
- 2) Independent contractors



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CLRC is operated by the



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**Immigration
Forum**

a 501(c)(3) organization

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