

Laws Often Disregarded for Household Workers

The New York Times

January 15, 1993, Friday, Late Edition - Final

Copyright 1993 The New York Times Company

Distribution: National Desk;

Section: Section B;; Section B; Page 16; Column 3; National Desk; **Law** Page; Column 3;; **Law** Page; An Analysis

Length: 1049 words

Byline: By TAMAR LEWIN

By TAMAR LEWIN

Body

While President-Elect Clinton promised a Cabinet that looks like America, Zoe Baird, his nominee for Attorney General, apparently behaved a bit too much like America: she hired, in this country illegally, a Peruvian couple as a baby-sitter and driver and she failed to pay the required Social Security taxes.

Accountants and lawyers say the system for reporting income paid to domestic **workers** is so cumbersome, and the supply of **household workers** so saturated with illegal aliens, that hundreds of thousands of Americans, and maybe millions, are probably flouting the **law**.

These lawbreakers include not only affluent two-earner couples with full-time help, like Ms. Baird and her husband, but less wealthy Americans who have weekly arrangements with cleaning women or baby-sitters. Experts say they believe that most of these Americans are fully aware they are breaking the **law**, but not all.

"I'd be willing to bet there are men in very high Government positions who are in exactly the same situation as Zoe Baird, but don't know it because it's their wives who deal with the domestic help," said Patricia McConnell, who writes an accounting and tax newsletter at Bear, Stearns & Company.

Exception Was Defeated

In 1985, when Congress was considering immigration legislation, which made it illegal to hire an undocumented alien, there was talk of a "Beverly Hills exception," exempting people with three or fewer employees.

But the exception was dropped after it was argued that the provision would be unfair to small-business owners, who are subject to many of the same burdens as **household** employers but who would not have been covered by the exemption. In addition, some members of Congress argued that it might subvert the goal of stopping the flow of people coming to this country illegally in quest of jobs.

The passage of the **law** did spur some people to find **household workers** who were in this country legally, and to start paying all the taxes that are due, experts said. But many others chose to ignore the **law**, and as a practical matter, the Immigration and Naturalization Service has almost never prosecuted people who employ illegal aliens in their homes.

"Only about 3 percent of the employed mothers of children under five use in-home care by a nonrelative, because it's the most expensive form of care, but among those who do, it's very common to hire illegal aliens off the books,"

Laws Often Disregarded for Household Workers

said Ellen Galinsky, a co-president of the Families and Work Institute. "I don't think anyone knows exactly how widespread it is."

Taxes in All Cases

To comply with the law, employers must find domestic workers who can legally work in the United States, and they must pay social security taxes and unemployment taxes for any worker paid more than \$50 in a three-month period. These taxes are due regardless of whether the employee is in the country legally or illegally.

For those who do not have a social security number, employers are supposed to set up an account for the payments, which come to 15.3 percent of the worker's pay. Half of the payments are made by the employer and half comes from the worker's wages.

"It's not the right thing to do, but I know of a number of cases in which the employer wanted to pay social security, but decided against it because the child-care worker resisted," Ms. Galinsky said. "The real problem is that child care is so poorly paid that when you take money out, there isn't much left."

A Manhattan father who has hired three baby-sitters in six years explained yesterday that although he and his wife, both lawyers, have tried hard to comply with the law, they found it impossible in their last two searches.

Avoiding Taxes

"The first time around, we interviewed 23 people, 18 of whom were illegal, and we hired one who was legal," he said. "When she left, we interviewed 14 people, not one of whom was legal, including the ones sent from the most elite employment agency. This last time, we interviewed 10 people, and offered the job to the one legal person who applied, but she didn't take it, in part, I think, because she wanted an off-the-books job where she'd take home more. So we're back to an illegal person. It worries me, because what we're really doing is avoiding our tax obligation."

Government officials and some accountants stress that however common the practice has become, avoiding taxes is precisely what many household employers are doing. Furthermore, they said, they are cheating their employees out of future social security benefits. And those who hire illegal aliens, many said, could find American workers if they were willing to pay higher wages.

Many working mothers hire illegal aliens as housekeepers or baby-sitters and sponsor them for a "green card," actually, a permanent residency visa that allows the alien to live and work in this country indefinitely.

But the process requires many years before the immigrant is legally allowed to work. And some families find the vagaries of immigration law surprising.

'A Crazy System'

"My wonderful baby-sitter, who was illegal and off the books, wanted me to sponsor her, so I went to a lawyer, who told me that to get a green card for her, I had to sign a letter telling the Labor Department that I was, in effect, breaking the law by employing an illegal alien," said a woman in Washington. "The lawyer said that was okay, because the Labor Department doesn't give the information to the Immigration and Naturalization Service. It seems like a crazy system."

After a four-year wait, that woman's baby-sitter got her green card and, as frequently happens, immediately quit for a more lucrative one.

Immigration lawyers say the number of domestic workers applying for permanent residency has dropped in recent years, largely because the process now takes as much as eight years after the Labor Department certifies that there is a shortage of Americans to fill a particular job.

Laws Often Disregarded for Household Workers

"The immigration law doesn't reflect any sympathy for families that need help, either live-in or by the day, to operate their households," said Frances Berger, a New York immigration lawyer. "The fact that the Labor Department certifies that there are no lawful U.S. workers to do these jobs indicates the need for immigrants."

Classification

Language: ENGLISH

Subject: IMMIGRATION (89%); ILLEGAL IMMIGRANTS (89%); SOCIAL SECURITY (89%); TAX LAW (89%); US SOCIAL SECURITY (89%); IMMIGRATION LAW (89%); FOREIGN LABOR (89%); TAXES & TAXATION (89%); CITIZENSHIP (78%); LEGISLATIVE BODIES (78%); LAWYERS (78%); US FEDERAL GOVERNMENT (77%); WORKING MOTHERS (76%); FAMILY (76%); UPPER INCOME PERSONS (76%); WEALTHY PEOPLE (76%); LEGISLATION (75%); SMALL BUSINESS (66%); ATTORNEYS GENERAL (58%)

Company: BEAR STEARNS & CO INC (68%); JUSTICE DEPARTMENT BEAR STEARNS & CO INC (68%)

Organization: JUSTICE DEPARTMENT

Ticker: BSC (NYSE) (55%)

Industry: LAWYERS (78%)

Person: BILL CLINTON (58%)

Geographic: UNITED STATES (95%)

Load-Date: January 15, 1993