



DIVISION OF DEVELOPMENTAL DISABILITIES

Hillsview Plaza, 3800 East Highway 34
c/o 500 East Capitol Avenue
Pierre, South Dakota 57501-5070
Phone: (605) 773-3438 | TTY: (605) 773-6412
FAX: (605) 773-7562
Website: dhs.sd.gov

Self-Direction Frequently Asked Questions Common-Law vs Co-Employer

What is self-direction?

Self-direction means that you, as the person enrolled in the waiver, want to assume responsibilities as your staff's employer or want to make decisions about the services purchased with your waiver budget. You will still need to follow the rules and guidelines that apply to Medicaid waivers, and you will still get help from your Family Support Coordinator and Agency with Choice provider to make sure the waiver is used according to rule and services are authorized timely.

As the employer of your staff, you will hire, train, supervise, sign off on timesheets, fire, and in some cases, negotiate the wage you want to pay your staff. The wage you decide to pay must not be under minimum wage or above the maximum amount that Medicaid will allow. This is referred to as Employer Authority. You can also help determine which services you use and the amount from your budget that you would like to spend on those services. This is referred to as Budget Authority.

If I can't direct services on my own, who can help me and how?

Minor children (under the age of 18), can have their parents help with self-direction. Adults who want to direct their services can choose a friend, family member, or legal guardian as their representative. Your representative can help with things like finding and recruiting employees, scheduling and participating in interviews, negotiating rates, providing training to employees, making sure employees are providing services in the plan and how you want them provided, helping you communicate your choices and preferences, signing timesheets, and keeping required paperwork or records. Your chosen representative cannot also be employed as your staff.

Who can I hire as my employee?

Anyone you choose to hire must meet the minimum requirements outlined by DDD. This includes age requirements for certain services, the ability to pass a background check, and additional screenings. You can hire family members if the family member is not your representative that helps with employer functions (hiring, firing, rate negotiation, etc.). If you are a minor, your parent cannot be your employee.

What are the differences between "common-law employer" and "co-employer"?

There are many similarities between the two models, however the main difference between the common-law employer and the co-employer model comes down to who is the employer of record for an employee. Under the common-law employer model, you, the recipient of services, would serve as the employer of record, and an Agency with Choice provider would simply take care of the IRS paperwork, payroll, and the new hire process. In the co-employer model, the family shares the employment relationship with the

Agency with Choice provider, but ultimately the Agency with Choice provider is considered the employer of record. That means that staff must comply with outlined agency policies.

Will there be limits on staff hours?

When you or your representative is enrolled as the employer of record through the common-law option, your staff will not be subject to any hourly limits set forth through Agency with Choice employer policies. However, you must adhere to the Fair Labor Standards Act which provides protections for workers hours worked in a work week.

What are my responsibilities as a “common-law” employer?

As a “common-law” employer, you are responsible for complying with all relevant state and federal laws and regulations concerning employment. These include occupational safety and health regulations, the Fair Labor Standards Act (FLSA), the Americans with Disabilities Act (ADA), federal and state equal opportunity laws, and others. In the common-law employer arrangement, the employer is solely responsible and liable for any negligent acts or omissions by the employer; the employee; other employee(s) or service provider(s); the individual receiving services; or, if applicable, the employer's designated representative.

Who handles paychecks and taxes?

Through the co-employer model, while you would be considered the co-employer, meaning that you are responsible for hiring, training, and terminating employees, you will be provided assistance from a Agency with Choice provider, for payroll and tax purposes. This provider will do things like issuing paychecks, completing new hire documentation (e.g. W-4) with your employee(s), and managing any IRS documentation that applies to your employee. Through the common-law model, you would be considered the employer and would receive support from an Agency with Choice provider with payroll and taxes.