

How Can I Hire My Spouse?



DECAL
Thriving Child Care
Business Academy

Hiring your spouse as part of your child care business

Owning a business has the advantage of being able to hire family members, but employing family may come with different employment tax requirements compared to non-family employees. When a married couple operates a business, there are several issues to consider.

Hiring a Spouse with a Sole Proprietorship

If you are a sole proprietorship (not a Single Member LLC), there are two options you have in hiring your spouse.

First, if one spouse controls the business, the second spouse is considered an employee and subject to Social Security and Medicare taxes, income tax, and FICA withholding. If you don't have one, you'll want to get a Federal Employer Identification Number (EIN) which is your identification for having an employee. Most employers pay a Federal and state unemployment tax as a part of the Federal Unemployment Tax Act (FUTA). Under certain criteria, you do not have to make Federal Unemployment Tax Act (FUTA) payments, and this could save you around \$420 a year. However, while FUTA payments are optional, opting to pay this tax provides social security credits for your spouse and the option to have shared benefits, such as a company retirement plan.

Second, if both spouses have a shared say in control and operation of the business and services, then a partnership exists. The IRS allows a special kind of partnership with spouses called a qualified joint venture. It is important to note that common law marriage does not qualify in this situation. A qualified joint venture is not treated as a partnership for tax purposes, so you can still file the same Schedule C as if you are a sole proprietor as long as you:

- A married couple filing jointly are the only members of the partnership,
- Both materially participate in the business,
- Both co-own the business and elect not to be treated as a partnership

Material participation refers to the level of involvement or activity that an individual has in a business. The IRS provides specific criteria to evaluate one's material participation

and can include consistent time and activity and use of specialized skills. If spouses do have a qualified joint venture with a sole proprietorship, they will generally each report their share of the net earnings from the business on their individual tax returns using Schedule C (Form 1040). Both individuals would be responsible for paying self-employment taxes on their share of the earnings.

Hiring a Spouse with an LLC or Any Other Type of Corporation

If your company is:

- An LLC of any kind, even a single-member LLC (or what people sometimes call a sole proprietorship LLC);
- A partnership that includes someone other than your spouse; or
- An S or C corporation,

then you need to hire your spouse as an employee. Again, you will need an EIN and, in this case, you will need to pay all the appropriate taxes, as with any employee. Your spouse will gain access to social security credits and any fringe benefits your company offers.

With an LLC or any other corporation, the spouse can be a co-owner in this way; they can be a partner, member, or shareholder just like any other person who you might partner with in a business. For example, you and your spouse could both be members of an S corporation or in a formal business partnership.

Two other considerations

Keep in mind that no matter how you employ a spouse, they should be treated like any other employee. For example, if you have an assistant that you pay \$14 an hour and you hire your spouse as another assistant, they can't get paid \$25 an hour—it has to be at the same or a similar level. You would also want your spouse to fill out any forms you require of other employees and make sure they meet background check requirements.

If your spouse is a business partner of any kind, whether it is as a qualified business partnership or they are a shareholder of an S corporation, for example, you should have an agreement in place, just like you would with any other partner. Typically, an agreement would include:

- Name of the business and its purpose
- Each spouse's capital contributions and percentage of ownership
- How profits and losses will be divided
- Decision-making and management responsibilities
- Roles and authority of each spouse
- Meeting procedures and voting rights
- Process for withdrawing from the partnership or dissolving it
- Dispute resolution methods
- Confidentiality clause to protect the business's confidential information

- Termination events, such as bankruptcy or death

This may seem “a bit much,” but having an agreement in place can head off any friction or disputes that may arise as you share the business, or at least provide rules for resolving them.

Additional Resources

If you have questions or need help, assistance is available.

[GaPDS Website](#)

[DECAL Thriving Child Care Business Academy Website](#)

To Find Other Study Guides: Click on [Resources](#) on the Academy home page

To Find Training: Click on [Trainings](#) on the Academy home page

To Register for Training: Click on [Schedules & Registration](#) on the Academy home page

To Sign Up for Study Groups: Fill out the [Intake Assessment](#)

For questions about coaching or study groups: Email GAcoaching@civstrat.com

To Find Other ECE Resources: Visit the [DECAL Website](#)

For General Questions about the Academy: Email thriving@dec.al.ga.gov

For More Information:

[Family Child Care Learning Home Rules and Regulations](#)

[Child Care Learning Center Rules and Regulations](#)

DEVELOPED AND DESIGNED BY CIVITAS STRATEGIES

***Disclaimer:** The information contained here has been prepared by Civitas Strategies and is not intended to constitute legal, tax, or financial advice. The Civitas Strategies team has used reasonable efforts in collecting, preparing, and providing this information, but does not guarantee its accuracy, completeness, adequacy, or currency. The publication and distribution of this information are not intended to create, and receipt does not constitute, an attorney-client or any other advisory relationship. Reproduction of this information is expressly prohibited. Only noncommercial uses of this work are permitted.*

Copyright © 2024 Civitas Strategies, LLC