

# Bond

**Nothing's Finer  
Than a  
Compliant I-9er**

Logan C. Geen, Esq.

Bond, Schoeneck & King, PLLC



*Commitment · Service · Value · Our Bond*

# Agenda

- Background
- Joint Employment Review
- Risks
- Best Practices
- Enforcement Advice
- Next Steps

# Background

- Me:
  - Health care attorney (compliance, reimbursement and fraud)
  - Represent several fiscal intermediaries in the New York State Consumer Directed Personal Assistance Program (“CDPAP”)

# Background

- Bond, Schoeneck & King, PLLC
  - 8 offices in New York State; 1 in Naples, FL; 1 in Kansas City; and 1 in Boston
  - One of the largest and most experienced labor and employment law practices in the Northeast
  - Counsel to NY CDPAANYS, significant representation of NY self-direction intermediaries

# Joint Employment

- An issue in self-direction from Day One
- Not a black and white issue
- Not resolved by self-direction regulations
- A matter of fact as much a matter of law

# Joint Employment

- Different Tests Apply
  - Wage and hour (Economic Reality Test)
  - Affordable Care Act (Common Law Test)

# Joint Employment

- Wage and hour:
  - High bar if the intermediary sets the wages
- ACA:
  - Turns on whether the service recipient has the “right to direct and control the home care provider as to how they perform the services”

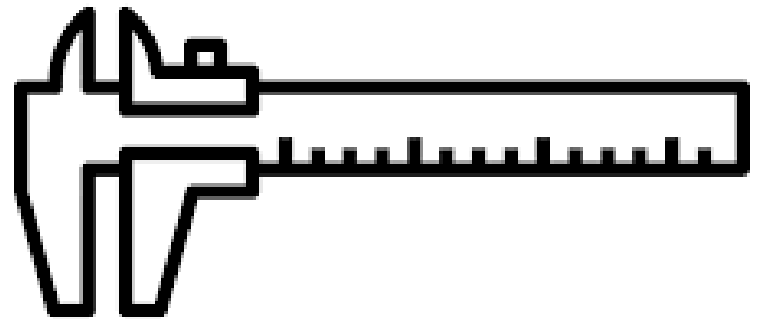
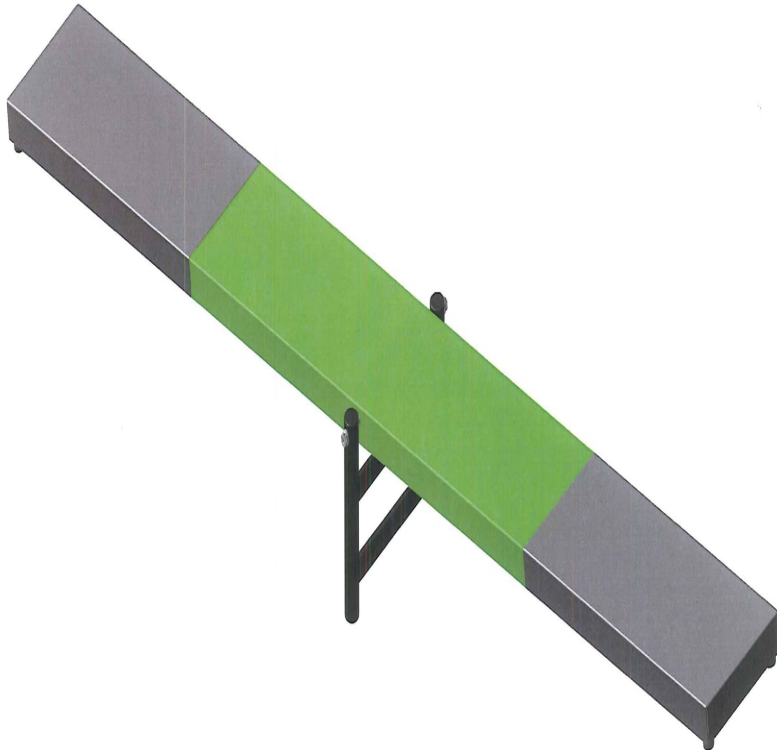
# Joint Employment: Risk Reduction

- Leave as much as possible to service recipients
  - EIN
  - Workers Compensation
  - Unemployment
- Dilemmas
  - Orientation
  - EVV
  - I-9



# Joint Employment

- The Struggle is Real



# I-9 Risks

- Increased risk of audits
- Enforcement push (political climate)
- Civil fines increasing
- Potential criminal prosecution

# I-9 Risks

- Sophisticated human resources departments can struggle with compliance
- Software is not a perfect solution
- A recurrent dilemma in self-direction

# I-9 Compliance: Best Practices

- Intermediary CAN manage I-9 verification on behalf of service recipients
- Intermediary acts as agent
  - Limited purpose
  - No indemnification
  - Legal review

# I-9 Compliance: Best Practices

- If agent, intermediary staff can sign in lieu of service recipient
- Consult M-274
- Designated, **trained**, individuals

# I-9 Compliance: Best Practices

- No Good Deed Goes Unpunished!
- Walking a fine line
- Agreement with recipient that individual who fails verification may not be engaged

# I-9 Compliance: Current Recipients

- Caregiver is NOT your employee
- NEVER backdate, erase, shred or modify ANY documents
- Do NOT try to correct problems on your own

# I-9 Compliance: Current Recipients

- No “ex post facto” application
- If you know, or think, there is an issue:
  - What you do next depends on the facts
  - Consult your legal counsel!
- Reverification not usually needed



# I-9 Compliance: Balancing Act

- Do not audit
- Maintain files only if agreement with recipient or required by state program regulations
- Remember joint employment!

# Enforcement Advice

- If ICE (or another government acronym) comes knocking:
- DO:
  - Be polite and respectful
  - Ask to see Notice of Inspection
  - Ask for agents' badge numbers

# Enforcement Advice

- DON'T:
  - Invite any agents to walk around your offices (keep them in reception area if possible)
  - Agree to an interview until you've talked with counsel
- Good will is precious (and finite)

# Responding to Enforcement

- You have three days to respond to an NOI
- Call your counsel!
- Response will address employment issue
  - Government will target intermediaries first
  - Agents unlikely to “get” joint employment

# Recap

- I-9 compliance is part of the puzzle of joint employment
- Best practices require good documents, training and clear policies
- Keep calm and carry on!

# QUESTIONS?

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