

# CRS Report for Congress

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## Social Security: Coverage of Household Workers - A Fact Sheet

Laura Haltzel<sup>1</sup>  
Domestic Social Policy Division

On October 22, 1994, President Clinton signed legislation (P.L. 103-387) that changed Social Security coverage of household workers. Before 1994, household service was considered covered for Social Security tax and benefit purposes if the worker was paid \$50 or more in cash in a calendar *quarter*. The new law changed the threshold to a *yearly* amount and raised it (to \$1,000 in 1994, indexed thereafter to average wage growth — it became \$1,100 in 1998, \$1,200 in 2000, \$1,300 in 2001, and \$1,400 in 2003, where it remains for 2004). In addition, the new law exempted most domestic workers under age 18, and provided that Social Security and unemployment taxes will be reported on the employer's annual federal tax return (before 1994, taxes were paid quarterly).

**Current Law.** "Domestic service" generally is defined as work performed as part of household duties that contribute to the maintenance of an employer's residence or administers to the personal wants and comforts of the employer. This includes work performed by housecleaners, maids, housekeepers, babysitters, gardeners, etc. When the service and earnings threshold requirements for such work are met, the employer must deduct Social Security and Medicare taxes and report the wages to the Internal Revenue Service (IRS). To do so, the employer must have an employer identification number, which is obtained from the IRS. The amount of the Social Security and Medicare tax in 2004, for the employer and employee each, is 7.65% on wages up to \$87,900. Separate Medicare taxes of 1.45% (for the employer and the employee each) must be paid on wages above \$87,900. An employer who pays household employees \$1,000 or more in a calendar quarter must also pay the unemployment tax. Social Security and federal unemployment taxes are reported on the employer's annual federal tax return.

There often is confusion about whether domestic workers are employees. Many people have the impression that domestic workers are self-employed as independent contractors if they work in more than one household, and therefore bear the burden of reporting and paying Social Security and other taxes. However, the tests that determine that a household worker is self-employed are fairly difficult to meet. Generally, a person who works in someone's home in circumstances where the homeowner retains a measure

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<sup>1</sup> This report was written by former CRS staffer Geoffrey Kollmann.

of “control” — basically meaning the right to give instructions to the household worker — is an employee.

**History of Provision.** Domestic workers were first covered by the 1950 Amendments to the Social Security Act. They were covered only if they (a) earned at least \$50 in cash from an employer in a quarter, and (b) were “regularly employed,” defined as working some portion of each of at least 24 days for an employer in a quarter. The \$50 limit was chosen because it was similar to the one that applied to employees who work in their own homes and because it then was the amount a worker needed to earn to receive a “quarter of coverage” (QC) — a certain number of which are necessary to be eligible for benefits. In 1954, Congress eliminated the 24-day rule. In 1977, Congress changed the rules regarding eligibility for earning a QC, replacing the \$50-per-quarter rule with one that granted a QC for every \$250 of annual earnings (the \$250 threshold was indexed to change annually thereafter in proportion to the growth in average wages in the economy — in 2004, it is \$900). However, Congress left in place the \$50-per-quarter test for coverage of domestic workers.

**Recent Legislation and New Law.** In early 1993, the issue of coverage of domestic workers burst into public awareness when several Cabinet nominees revealed that they had failed to report the wages they had paid to childcare providers. Subsequent media scrutiny made it apparent that under-reporting of household wages was common. It also highlighted that householders were supposed to be reporting even occasional work such as babysitting and lawn mowing. As the threshold had not been changed for 43 years, the question naturally arose of whether it should be raised.

Several measures were introduced in the 103<sup>rd</sup> Congress that would have raised the threshold by varying amounts. On March 22, 1994, Representative Andrew Jacobs introduced H.R. 4105, which would have raised the threshold to \$1,250 a year in 1995, to be indexed thereafter to increases in average wages. This measure was included in H.R. 4278, approved by the House on May 12, 1994.

On October 5, 1994, conferees agreed to a measure that raised the threshold for Social Security coverage of household workers to \$1,000, effective in 1994. Workers and their employers who paid the tax on earnings of less than \$1,000 in 1994 received a refund, but there was no loss of wage credits for the earnings. The measure also provided that the threshold would rise in the future, in \$100 increments, in proportion to the growth in average wages in the economy (it rose to \$1,100 in 1998, \$1,200 in 2000, \$1,300 in 2001, and \$1,400 in 2003, where it remains for 2004). Domestic workers under age 18 are exempt except when they are regularly employed in a job that is their principal occupation. Persons employing household workers will report Social Security and federal unemployment taxes on their annual federal tax returns. Beginning in 1998, employers of domestic workers earning more than the threshold have to make estimated quarterly tax payments in order to avoid a tax penalty. The conference report was approved in the House by a vote of 423-0, and in the Senate by unanimous consent, on October 6, 1994. President Clinton signed it into law (P.L. 103-387) on October 22, 1994.