

Taxing Nannies

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ABSTRACT: Nannies in the United States often work long hours for low wages and fear retaliation if they complain. This precarity is exacerbated by nannies working informally, or “off the books,” keeping their work secret from state and federal tax agencies, as well as employment and labor agencies. Yet we have little understanding of how nannies navigate the tax reporting that renders them formal or informal.

This Article investigates nannies’ preferences for or against formal employment and tax reporting, the reasons behind such preferences, and how such preferences correspond to nannies’ relationships with their employers and legal institutions more broadly. The Article employs a multi-method research approach that includes an original and innovative survey of nannies and an analysis of nannies’ tax-related posts on the online forum Reddit. To supplement this research, the Article also discusses interviews with fifteen subject matter experts regarding industry norms, common challenges nannies face, and policy reforms.

This multi-method approach reveals three key takeaways. First, surveyed nannies express a strong preference for and experience with formal employment. However,

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this Article cautions against extrapolation—a subset of nannies, often undocumented and working more informally, is missing from surveys and the literature. Second, the formal/informal dichotomy so prominent in the discourse is inaccurate. Rather, nanny pay arrangements exist across a spectrum, with some compensation both on and off the books to accommodate hirers' and nannies' complicated interests. As a consequence, the Article's third takeaway is that simple calls for increased enforcement may not accomplish their intended goals, given the heterogeneity of nannies' tax lives. Instead, other legal institutions must first be reformed to better support vulnerable nannies and align incentives for formality across key systems such as tax, immigration, and public benefits.

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INTRODUCTION

Childcare is one of America’s greatest social and political quandaries. Care is scarce and expensive, while childcare workers are underpaid and undervalued.¹ Advocates in this complex space tend to overlook nannies²—considered a luxury—relative to more egalitarian options like universal preschool or subsidized infant care.³ Among domestic worker advocates, nannies are often viewed as distinct from other workers, perhaps because they tend to be U.S. citizens,⁴ or because they are presumed to command higher wages than other domestic workers.⁵

Notwithstanding their relative expense, nannies are vital to the U.S. childcare landscape. Due to their flexible hours and unique skillset, nannies permit moderate-to-high-income parents, especially mothers, to pursue leadership positions as business executives, doctors, lawyers, and politicians.⁶

1. See, e.g., Gillian B. White, *Why Daycare Workers Are So Poor, Even Though Daycare Costs So Much*, ATLANTIC (Nov. 5, 2015), <https://www.theatlantic.com/business/archive/2015/11/child-care-workers-cant-afford-childcare/414496> (on file with the *Iowa Law Review*) (stating that childcare costs can be as high as fifteen percent of median income in some states, while the “median hourly wage for childcare workers in the [United States] is \$10.39 [in 2015], nearly [forty] percent below the median hourly wage of workers in other occupations”).

2. This Article uses the word “nanny” to encompass domestic childcare workers who receive pay for care provided in the child(ren)’s home. We acknowledge the gendered and paternalistic connotations of the word. See Taunya Lovell Banks, *Toward a Global Critical Feminist Vision: Domestic Work and the Nanny Tax Debate*, 3 J. GENDER RACE & JUST. 1, 4 (1999) (arguing that the term “nanny” “used by affluent professional women, romanticizes and conceals the exploitative nature of the employer-employee relationship” and “genders as female, and normalizes surrogate childcare and domestic labor in the private sphere”); Kasia M. Jaszczolt, *Varieties of Defaults*, 1 BELGRADE ENG. LANGUAGE & LITERATURE 35, 57 (2009) (describing how the word “nanny” can trigger an unreflective enrichment to ‘female nanny’ and is associated with “such cultural icons as Mary Poppins, Jane Eyre, or Fräulein Maria from *The Sound of Music*”).

After many interviews with subject matter experts and advocates, we determined that nanny is the most descriptive word for our target worker population. The next-best alternative phrase—unrelated non-congregate paid domestic childcare worker—is perhaps more sanitary but is too wordy.

3. See, e.g., Tarjei Havnes & Magne Mogstad, *Is Universal Child Care Leveling the Playing Field?*, 127 J. PUB. ECON. 100, 113–14 (2015) (analyzing Norway’s expansion of universal childcare to suggest that the benefits of subsidizing childcare to middle-income and high-income families may not exceed the costs and therefore support targeted as opposed to universal subsidies).

4. See *infra* text accompanying note 52.

5. Recent data on domestic worker wages does not bear out this assumption. See *infra* notes 55–60 and accompanying text.

6. See Patricia Cortés & Jessica Pan, *Outsourcing Household Production: Foreign Domestic Workers and Native Labor Supply in Hong Kong*, 31 J. LAB. ECON. 327, 328 (2013) (explaining how, because “domestic helpers generally substitute for time spent in household production, they potentially influence the labor supply and fertility decisions of women, particularly the middle and highly skilled”). Cortés and Pan explore differences in the availability and cost of foreign domestic workers (“FDWs”) in Hong Kong and Taiwan to estimate that “reductions in the relative wage of FDWs significantly increase the probability that a woman decides to join the labor force.” *Id.* at 331. One prominent anecdotal example is Samantha Power, President Obama’s U.N. Ambassador.

Despite their importance, nannies in the United States occupy a precarious socio-economic position.⁷ Nannies' caregiving, unlike care for seniors and people with disabilities, lacks direct public support through Medicare, Medicaid, or other governmental programs.⁸ Many nannies work more than forty hours per week for less than the minimum wage;⁹ they may fear retaliation if they complain about pay or work conditions.¹⁰ Additionally, the racist, sexist, and xenophobic dimensions of nannies' vulnerabilities are well-documented.¹¹ Even as Congress debates greater workplace protections, nannies remain isolated and lack the basic federal protections guaranteed to nondomestic employment.¹²

Nannies' precarity and isolation stem from their industry's informality.¹³ Tax reporting, in turn, is a constitutive element of a worker's formality or lack thereof; failing to properly report income for tax purposes renders nannies informal. In this Article, "formal" (or "on the books") refers to an arrangement in which the parent-hirer complies with all required tax withholding and reporting obligations.¹⁴ "Informal" ("off the books" or "under the table") refers to an arrangement in which the parent-hirer does not report the nanny's pay

As she explained, "Without [my nanny] María's dedication, I could never have done my job. She was the single reason I would be able to work [fourteen]-hour days in national security for eight years during the Obama administration." Samantha Power, *Samantha Power Shares the Most Important Lesson She Learned from Her Time in Government*, THRIVE GLOB. (Sept. 17, 2019), <https://community.thriveglobal.com/samantha-power-lessons-government-national-security-raise-family> [<https://perma.cc/8AQE-EB84>].

7. See LINDA BURNHAM & NIK THEODORE, NAT'L DOMESTIC WORKERS ALL., HOME ECONOMICS: THE INVISIBLE AND UNREGULATED WORLD OF DOMESTIC WORK 4–5 (2012); Pierrette Hondagneu-Sotelo, *Regulating the Unregulated?: Domestic Workers' Social Networks*, 41 SOC. PROBS. 50, 51 (1994).

8. *An Overview of Medicare*, KFF (Feb. 13, 2019), <https://www.kff.org/medicare/issuebrief/an-overview-of-medicare> [<https://perma.cc/6YRT-ATLA>]; Raymond C. O'Brien, *Private Caregiver Presumption for Elder Caregivers*, 56 U. MICH. J.L. REFORM 345, 348 (2023) (stating that "long-term care institutional costs . . . are often borne by Medicaid support" and that "government programs increasingly finance in-home support networks" for elder care).

9. See *infra* Section I.A.1.

10. See *infra* notes 178, 229–34 and accompanying text.

11. See, e.g., Charlotte S. Alexander, *Misclassification and Antidiscrimination: An Empirical Analysis*, 101 MINN. L. REV. 907, 907–08 (2017); Banks, *supra* note 2, at 6–7, 18–21; Kati L. Griffith, *The Fair Labor Standards Act at 80: Everything Old Is New Again*, 104 CORNELL L. REV. 557, 567 (2019).

12. Domestic Workers Bill of Rights Act, S. 2569, 117th Cong. (2021); Peggie R. Smith, *Regulating Paid Household Work: Class, Gender, Race, and Agendas of Reform*, 48 AM. U. L. REV. 851, 863–64, 887–90 (1999) (describing both the nineteenth-century reformers who advocated to treat domestic work as a "regulated employment relationship" as well as New Deal policymakers' ultimate refusal to include domestic work in legal protections); Shayak Sarkar, *The New Legal World of Domestic Work*, 32 YALE J.L. & FEMINISM 1, 16–17 (2020) (describing the passage of state protections for domestic workers and the ongoing federal debates).

13. Brian Erard, *Who Is Minding the Nanny Tax?*, 2018 IRS-TPC RSCH. CONF. 189, 189–90.

14. In most cases, formality entails classifying the nanny as an employee. For more discussion of the relationship between tax reporting and worker classification status, see *infra* Section I.B.1. For more detail on these often-complex reporting obligations at the federal level, see generally INTERNAL REVENUE SERV., DEP'T OF THE TREASURY, PUBLICATION 926: HOUSEHOLD EMPLOYER'S TAX GUIDE FOR USE IN 2024 (2023) [hereinafter IRS PUBLICATION 926 FOR 2024], <https://www.irs.gov/pub/irs-pdf/p926.pdf> [<https://perma.cc/36V3-WS7V>] (describing domestic employers' tax reporting obligations).

to state or federal tax agencies.¹⁵ Formal workers receive credit for Social Security retirement benefits, Medicare, federal and state disability programs, and unemployment insurance.¹⁶ Informality, in contrast, perpetuates a mien of secrecy and hobbles the workers' labor, employment, and social insurance protections. As we explain below, many arrangements fall somewhere in between the rigid formal/informal dichotomy. Some parents even use tax documents to misclassify their relationships with their household employees, illegally providing them with documents reserved for independent contractors or family *business* employees.

The many forms of anecdotal noncompliance—whether with tax documents or without—suggest a broader problem. According to one study, parent-hirers' compliance with their “nanny tax” reporting obligations stands at a mere five percent.¹⁷ A commonly suggested solution to such pervasive informality is increased enforcement of tax reporting obligations.¹⁸ Tax scholarship in particular tends to center on the decision-making of hirers rather than nannies; a focus on enforcement in such a context might seem to make good sense.¹⁹ However, recent experience has shown that aggressive enforcement is not without costs for the Internal Revenue Service (“IRS”)²⁰ and, more importantly given our interests, for vulnerable workers.²¹ As we explain below, increasing enforcement in a nonfunctional or unfair system can be ineffective and, at the same time, harm vulnerable taxpayers. Rather, crafting effective tax policies first requires identifying the key questions that should be considered, as well as the basic interests and vulnerabilities of affected groups.

15. To unilaterally comply with the tax law in this situation, the nanny must file as a self-employed independent contractor. See *infra* text accompanying notes 104–07. However, where no form is provided, the nanny may fail to report all or some of her nanny income.

16. This list assumes that the formal worker should be classified as an employee, which is true for nearly all nannies. See *infra* notes 81–83 and accompanying text. For a discussion of the meaning and stakes of this classification, see discussion *infra* Section I.B.1.

17. Erard, *supra* note 13, at 196.

18. See, e.g., *id.* at 205; Debra Cohen-Whelan, *Protecting the Hand That Rocks the Cradle: Ensuring the Delivery of Work Related Benefits to Child Care Workers*, 32 IND. L. REV. 1187, 1205 (1999) (“Enforcement of the nanny tax provisions provides the best weapon to combat evasion of the employment taxes by household employers.”); see discussion *infra* Part III (summarizing experts' policy recommendations, including increased enforcement).

19. See *infra* notes 67–74 and accompanying text.

20. See Alan Rappoport, *I.R.S. Halts Surprise Visits to Homes and Businesses*, N.Y. TIMES (July 24, 2023), <https://www.nytimes.com/2023/07/24/us/politics/irs-surprise-visits.html> (on file with the *Iowa Law Review*) (describing Republican backlash to IRS enforcement practices, which resulted in cutting \$1.4 billion in IRS funding).

21. See MARGOT L. CRANDALL-HOLLICK, CONG. RSCH. SERV., IN11952, AUDITS OF EITC RETURNS: BY THE NUMBERS 3 (2022), <https://crsreports.congress.gov/product/pdf/IN/IN11952/1> (on file with the *Iowa Law Review*) (“Audit rates for EITC returns are disproportionately high compared to the share of taxpayers who claim the credit . . .”). See generally Hadi Elzayn et al., Stanford Inst. for Econ. Pol'y Rsch., *Measuring and Mitigating Racial Disparities in Tax Audits* (Jan. 30, 2023) (finding that, due to high rates of EITC audits, Black taxpayers are audited nearly three to five times more than non-Black taxpayers, despite the fact that this pattern does not maximize the detection of underreported taxes).

In this Article, we set out to conduct a multi-method study to offer insights into nannies' interests and potential vulnerabilities as well as spotlight the questions that should guide policy for this group of workers. We started with a two-pronged research approach including a survey of nannies' tax preferences and experiences and an analysis of nannies' tax-related posts on the online platform Reddit.²² To supplement this research, we also interviewed fifteen subject matter experts regarding industry norms, common tax challenges faced by nannies, and recommended tax policy reforms.²³ The research and expert interviews confirmed and challenged many prevailing assumptions about preferences and practices among nannies and their hiring families. They also highlighted vulnerabilities nannies face as well as novel tax behaviors previously absent from the literature. While surveys of paid domestic workers address work conditions and general economic vulnerability,²⁴ to our knowledge, there is no research that explores nannies' attitudes about and experiences regarding formality and tax reporting.²⁵ This initial inquiry thus fills a notable gap.

Our multi-method approach revealed three key takeaways. First, our findings reveal a stated preference for formality, at least on the part of some segment of the nanny population. A preference for formality dominated among the fifty-seven nannies who took our survey as well as the Reddit posters.²⁶ Among Reddit posters, in addition, this preference for formality often generated conflict or a fear of conflict with parent-hirers, who were often presented in the posts as preferring informality. Both sources of evidence evince nannies' desire to comply with the law as a primary motivating factor; they articulated fear of being audited or otherwise landing in the crosshairs of the IRS.²⁷ Based solely on our survey and our Reddit analysis, it seems possible to reject the null hypothesis that nannies as a whole prefer informality over formality.

While such a result might seem to support a push for increased enforcement, we are reluctant to extrapolate our research results to the general population of nannies. Nannies who work informally and undocumented nannies were nearly absent from our survey sample due to recruiting challenges and may be substantially less likely to share their preferences and experiences on a forum like Reddit.²⁸ Immigrant nannies may be a minority of nannies overall, but they loom large in public consciousness.²⁹ Our survey sample was higher

22. See discussion *infra* Sections II.A, II.B for further description of our research.

23. See discussion *infra* Section II.C.

24. See, e.g., BURNHAM & THEODORE, *supra* note 7, at 8–9.

25. Moreover, due to high levels of informality among nannies, there is little administrative data on tax compliance choices from which potentially valuable inferences can be drawn. Two notable exceptions are discussed below. See *infra* Section I.A.2.

26. See discussion *infra* Sections II.A–B.

27. See discussion *infra* Sections II.A–B.

28. For example, one survey recruitment method focused on popular Los Angeles parks where nannies congregate, with only modest success.

29. ELIZABETH CUMMINS MUÑOZ, *MOTHERCOIN: THE STORIES OF IMMIGRANT NANNIES* xi (2022) (arguing that “[t]he role of the immigrant nanny is to facilitate this [motherly] ideal”:

paid and more likely to be white, U.S. born, and authorized to work in the United States as compared to nannies across the United States.³⁰ It also likely overrepresented nannies who see themselves as professional, long-term nannies as opposed to seeing nannying as a temporary occupation. A preference for formality among such a group is unsurprising. To be sure, our survey sample represents an important segment of the nanny population, as most nannies in the United States are indeed white, U.S.-born, and work-authorized, and many likely identify as professionals. Even so, it does not represent all perspectives of nannies in the United States.³¹ This likely nonrepresentativeness is reflected in the fact that a preference for formality was dominant in our survey sample, while prior research has found overwhelmingly high levels of informality among nannies.³²

A subset of the nanny population is hidden from observation, and these hidden workers are more likely to lack work authorization, be lower paid, and rely on public benefits. To learn more about this group, we focused portions of our expert interviews on them. Our experts confirmed that a not-insignificant proportion of nannies do indeed prefer informality, especially those who are less visible, harder to reach, and would be understandably reluctant to participate in a survey or post about their tax habits on Reddit. Moreover, nannies' reasons for preferring informality often intersect with conditions of vulnerability, including fear of immigration-related consequences,³³ need for cash, and reliance on public benefits.³⁴

Second, we learned that the formal/informal dichotomy so prominent in the nanny-sector discourse is misleading. Nannies' pay arrangements exist along a spectrum. Perhaps most commonly, some parent-hirers improperly report nannies' pay as independent contractor compensation rather than employee wages.³⁵ By "1099"-ing employees who should be receiving W-2s,

"always present—loving tirelessly, sacrificing constantly, protecting fiercely, and making the work of housekeeping and family nourishment [] neat and invisible").

30. See *infra* Table 2 (comparing our sample demographics with general nanny demographics).

31. And, of course, the tax reporting preferences of white, U.S.-born nannies might very well align with those of some portion of undocumented nannies.

32. See Erard, *supra* note 13, at 189–90; Kim M. Bloomquist & Zhiyong An, *Geographic Variation in Schedule H Filing Rates: Why Should Location Influence the Decision to Report "Nanny" Taxes?*, 98 PROC. ANN. CONF. ON TAX'N & MINUTES ANN. MEETING NAT'L TAX ASS'N 26, 26–27 (2005), (discussing high levels of nanny tax noncompliance).

33. Undocumented nannies in particular face a distinct set of trade-offs. They are often ineligible for the various social insurance programs to which they would contribute through payroll or self-employment taxes, thus eliminating the benefits that other workers receive from such taxes. See, e.g., SOC. SEC. ADMIN., UNDERSTANDING THE BENEFITS 15 (2024), <https://www.ssa.gov/pubs/EN-05-10024.pdf> (on file with the *Iowa Law Review*); see also Francine J. Lipman, *The Taxation of Undocumented Immigrants: Separate, Unequal, and Without Representation*, 9 HARV. LATINO L. REV. 1, 5–6 (2006). Meanwhile, they may prefer not to reveal their work to the government due to fear of immigration-related retaliation, even as tax compliance can be a basis for immigration benefits.

34. See discussion *infra* Section II.C.

35. See discussion *infra* Section II.C.2. In very rare circumstances, a nanny could potentially be properly classified as an independent contractor. See discussion *infra* Section I.B.1 for further discussion of worker classification rules.

parents may use tax documents in an illegal effort to formalize the misclassification.³⁶ Classifying a worker as an independent contractor imposes fewer reporting requirements on parent-hirers.³⁷ It is, therefore, a way for hiring families to skirt the complex and byzantine rules that apply to domestic employers,³⁸ especially at the state level, while preserving their ability to claim childcare-related tax benefits.³⁹

We also heard many examples of partial reporting, where only a portion of a nanny's pay was "on the books."⁴⁰ The Reddit analysis revealed an especially interesting practice of parent-hirers reporting a nanny's agreed-upon post-tax wage but then paying them (unreported) cash to cover the taxes that were withheld.⁴¹ Several experts attributed partial reporting to some nannies' desire to retain public benefits eligibility under means-tested benefit cliffs—like Medicaid and Section 8 housing vouchers.⁴² In this way, partial reporting can be seen as a form of self-help in a multi-faceted and interdependent system, enabling nannies to work without losing vital public support.

The third and final takeaway bears on policy responses: Our research adds significant complexity to any simple, enforcement-based solution to informality in the nanny sector. As a baseline matter, we agree with the predominant concern in the literature around low compliance and recognize its importance to nannies and to society broadly. Our nanny survey and the Reddit analysis confirmed that many nannies would benefit from increased enforcement to the extent that it would drive parent-hirers to comply with nannies' preferences for formal employment while reducing the potential for conflict. However, increasing enforcement absent broader structural reform may adversely affect the most vulnerable nannies. It also risks creating backlash against the IRS, particularly if parent-hirers remain befuddled by the complexity of their employer-based tax obligations.

Our research reveals at least three axes for structural reform. First, immigration reform is necessary to bring informal workers out of the shadows.

36. See *infra* notes 173–74, 182–83 and accompanying text.

37. See *infra* notes 95–102 and accompanying text.

38. Misclassifying workers as independent contractors merely shifts some of the tax reporting complexity onto workers; it also often excludes workers from eligibility for vital safety-net benefits including unemployment insurance, workers' compensation insurance, and state disability insurance. See discussion *infra* Section I.B.1 for further explanation of the employee/independent contractor distinction.

39. See *infra* notes 88–94, 244–46 and accompanying text.

40. This practice may even include families who utilize payroll services but nonetheless treat sporadic evening shifts as "babysitting" for cash, as opposed to overtime.

41. See *infra* text accompanying notes 169–72. "Grossing-up" refers to the practice of increasing a gross pay amount in order to cover taxes paid. To properly gross-up wages, the amount of the gross-up must also be taxed.

42. See *infra* notes 224–25 and accompanying text; see also Leslie Forde, *Paying Nannies Under the Table Is the Norm*, SLATE (May 18, 2018, 10:00 AM), <https://slate.com/human-interest/2018/05/child-care-man-nannies-feel-forced-into-under-the-table-pay.html> [<https://perma.cc/Q449-BJBH>] ("After I interviewed over [sixty] potential nannies, and despite my offering paid benefits and overtime, a surprising number declined because being paid 'over the table' would affect their ability to qualify for government subsidies.").

Workers will not feel safe reporting their wages if they fear deportation. Second, policymakers must reform means-tested public benefit programs with the recognition that benefits cliffs lead to underreporting. Third, to facilitate parent-hirers' compliance, the income reporting process must be streamlined. Rules at the state level are particularly byzantine.⁴³ Increasing enforcement without repairing these systemic problems risks harming the most vulnerable nannies while also likely failing to increase compliance.

Rather than offering definitive conclusions about nannies' preferences, this project seeks to model the type of inquiry that should inform tax policymaking. Those interested in crafting policies to support nannies and other vulnerable workers should ask: Why do some nannies prefer formality/informality? How do nannies and hiring families currently comply with or get around rules relating to tax reporting? What drives this behavior? Who does the behavior benefit, and who does it harm? Who might a policy of increased enforcement benefit or harm? Our initial inquiry reveals that the answers to these questions are more complicated than a cursory analysis might assume.

The Article proceeds as follows. In Part I, we review the existing literature on nannies in the United States, drawing upon secondary analysis of administrative data, studies from advocacy organizations, and interdisciplinary scholarship. We also describe the legal landscape of tax and employment obligations for parent-hirers. In Part II, we report our survey findings, the results of our analysis of Reddit posts, and describe what we learned from expert interviews. Part III offers policy implications.

I. BACKGROUND

A. NANNIES IN THE UNITED STATES

Existing literature often looks at domestic workers broadly rather than focusing only on nannies. Survey and empirical work relating to domestic workers—including important sociological fieldwork—documents issues of displacement, migration, exploitation, and challenges in labor organizing.⁴⁴ It largely overlooks domestic workers', including nannies', tax behaviors and preferences.⁴⁵

Our research revealed that nannies are distinct from other domestic workers along several dimensions. For one, nannies may be especially vulnerable to workplace abuses because they tend to work for only one or perhaps two

43. See *infra* notes 89–91 and accompanying text.

44. See, e.g., Hondagneu-Sotelo, *supra* note 7, at 52–53; GERALDINE PRATT, WORKING FEMINISM 38–41 (2004). This scholarship focuses largely on social networks and work conditions, with some attention paid to employment and labor law protections as well. BURNHAM & THEODORE, *supra* note 7, at 8–9.

45. There is at least one notable exception: Catherine B. Haskins, Household Employer Payroll Tax Evasion: An Exploration Based on IRS Data and on Interviews with Employers and Domestic Workers (Feb. 2010) (Ph.D. dissertation, University of Massachusetts Amherst) (ProQuest) (analyzing “IRS data on audits” and “data on Schedule H household employment payroll tax returns”).

families at any one time, making them more reliant on each parent-hirer. From a legal standpoint, working for only one or two families suggests that most nannies should be classified as employees rather than independent contractors.⁴⁶ (Despite this, even papers of record like the *New York Times* appear to incorrectly characterize a nanny-employee as a “babysitter working [forty] hours during a workweek.”⁴⁷) Another unique aspect of nannying is that “living in” is more common among nannies than other domestic workers and contributes to increased employer control, employee isolation, and potential mistreatment.⁴⁸ And, because nannies care for young children, the work is more intimate—and perhaps more emotionally charged—than other kinds of domestic work.⁴⁹ Some subject matter experts in our interviews also expressed an assumption that nannies are paid significantly more than other domestic workers, though available data does not always corroborate this disparity.⁵⁰

46. This assumption may not hold for other domestic workers like housecleaners or landscapers. Determining whether a worker is an employee or independent contractor turns largely on the question of control: Does the worker or the hirer control the work methods and conditions? See *Topic No. 762, Independent Contractor vs. Employee*, IRS (Feb. 22, 2024), <https://www.irs.gov/taxtopics/tc762> [<https://perma.cc/PLB6-GXX5>]. If a worker spends many hours in the home of one family, the family is much more likely to exert significant control over how the work is done. See discussion *infra* Section I.B for further discussion on the difference between employee and independent contractor classifications.

47. Eliza Shapiro, *Behind the Gates of a Private World for Only the Wealthiest New Yorkers*, N.Y. TIMES (Nov. 6, 2023), <https://www.nytimes.com/2023/11/06/nyregion/nyc-rich-private-clubs.html> (on file with the *Iowa Law Review*).

48. BURNHAM & THEODORE, *supra* note 7, at 18–19 (noting that, compared to other types of domestic work, nannies are more likely to be paid less than minimum wage, “a consequence of many nannies’ [sic] working as live-in domestic workers”).

Criminal abuse can arise from “living in.” See, e.g., *United States v. Dann*, 652 F.3d 1160, 1162 (9th Cir. 2011) (reviewing criminal conviction for charges on “conspiracy to commit visa fraud . . . visa fraud . . . forced labor . . . unlawful conduct regarding documents in furtherance of servitude . . . and harboring an illegal [noncitizen] for the purpose of private financial gain” arising from “conduct involving [defendant’s] live-in nanny and housekeeper, Zoraida Peña Canal,” a Peruvian citizen (footnote omitted)); BURNHAM & THEODORE, *supra* note 7, at 25 (listing hazards of live-in work, including “exceedingly long hours,” working during scheduled time off, insufficient sleep, lack of privacy and freedom, and verbal abuse); Hondagneu-Sotelo, *supra* note 7, at 53 (“Domestic work does indeed occur in an isolated, largely non-regulated and privatized environment . . .”).

49. See, e.g., CAMERON LYNNE MACDONALD, *SHADOW MOTHERS: NANNIES, AU PAIRS, AND THE MICROPOLITICS OF MOTHERING* 115 (2011) (characterizing nannies and au pairs as “shadow mothers” and arguing that “creating and sustaining attachment provides an important source of emotional nourishment in a job with few other rewards”). A parent-hirer might feel guilty about the amount of time their child spends with a nanny, leading them to deny, and encourage the nanny to downplay, nanny-child emotional intimacy. See Eileen Boris & Rhacel Salazar Parreñas, *Introduction*, in *INTIMATE LABORS: CULTURES, TECHNOLOGIES, AND THE POLITICS OF CARE* 1, 5–6 (Eileen Boris & Rhacel Salazar Parreñas eds., 2010).

50. See Yana van der Meulen Rodgers & Elaine Zundl, *Domestic Worker Inequities and Rights: A Mixed-Methods Analysis* 37 tbl.2 (Rutgers Sch. of Mgmt. & Lab. Rels., Ctr. for Women & Work, Working Paper No. 2018-1, 2018) (reporting average wages across domestic work based on 2015 to 2017 data, which reveals nanny wages to be below the average wage for both housecleaners and health aides). Burnham and Theodore report nannies’ average wage at eleven dollars per hour among their 2012 survey respondents, compared to ten dollars per hour for housecleaners and caregivers. BURNHAM & THEODORE, *supra* note 7, at 18 tbl.1. Although nannies in this survey

This Section summarizes the limited research on characteristics of the U.S. nanny population as well as research on nannies' tax behavior. Because tax research in this area is so sparse, we review work on domestic workers generally as well.

1. Characteristics of the U.S. Nanny Population

Research on nannies in the United States is limited. Analysis of 2018 Consumer Population Survey ("CPS") data estimated 550,000 childcare providers worked in private households in that year.⁵¹ Other scholars estimated that these nannies are overwhelmingly and unsurprisingly female (98%) and, perhaps more surprising, U.S.-born (75%).⁵² Racially, the nannies in the CPS data most often identified as white (69%), followed by Hispanic (20.2%) and Black (4.7%).⁵³ In terms of nannies' educational background, a smaller California-based survey found that thirty percent had a high school certificate or less, twenty-five percent had some college, eleven percent had an associate degree, and thirty-four percent had a bachelor's or graduate degree.⁵⁴

Various estimates suggest that average wages hover a few dollars above the federal minimum wage⁵⁵—although not necessarily above state minimum wages.⁵⁶ The CPS data from 2015 to 2017 revealed nannies' average wage was \$9.41 per hour.⁵⁷ Using the Bureau of Labor Statistics inflation calculator, the average 2017 wage would be about \$12.08 per hour in 2024.⁵⁸ A 2012 survey

reported a higher hourly wage than other kinds of domestic workers, the disparity is quite small and would not seem to merit the distinct treatment by labor advocates. Moreover, the same survey also found that nannies are more likely to be paid below the minimum wage compared to other types of domestic workers. *Id.* at 18–19.

51. Erard, *supra* note 13, at 197.

52. Rodgers & Zundl, *supra* note 50, at 36 tbl.1 (analyzing CPS data from 2015 to 2017 and finding that 74.7% of nannies are U.S.-born, and 7.7% are U.S.-naturalized, for a total of 82.4% of nannies, compared to 47.2% of housecleaners). In Table 2, *infra*, we compare this U.S.-born and naturalized percentage alongside the percentage of nannies that have a Social Security number eligible to work from our survey. The two categories are similar but not equivalent—for example, beneficiaries of Temporary Protected Status ("TPS") or Deferred Action for Childhood Arrivals ("DACA") are not citizens but may still possess work authorization.

53. *Id.*

54. ANNA POWELL, TOBI ADEJUMO, LEA J.E. AUSTIN & ABBY COPEMAN PETIG, CTR. FOR THE STUDY OF CHILD CARE EMP., CAREGIVER MOTIVATION, IDENTITY, AND RESILIENCE: A STUDY OF FAMILY, FRIEND, NEIGHBOR (FFN), AND NANNY CARE IN CALIFORNIA - PART TWO 12 tbl.1 (2023), <https://cscce.berkeley.edu/wp-content/uploads/2023/10/california-ffn-nanny.pdf> [<https://perma.cc/Z84Y-LSMG>] (reporting from a sample size 114 nannies in California, gathered during 2022 as part of a larger survey of grandparent, friend, and nanny-caregiver networks).

55. *History of Changes to the Minimum Wage Law*, U.S. DEP'T LAB., <https://www.dol.gov/agencies/whd/minimum-wage/history> [<https://perma.cc/SJS6-NK4Y>] (discussing the effective federal minimum wage of \$7.25 per hour since 2009).

56. *E.g.*, *History of California Minimum Wage*, STATE CAL. DEP'T INDUS. RELS., <https://www.dir.ca.gov/iwc/minimumwagehistory.htm> [<https://perma.cc/48GF-6BVB>] (reporting a state minimum wage of ten dollars per hour in 2016).

57. Rodgers & Zundl, *supra* note 50, at 37 tbl.2. Interestingly, the data revealed a slightly higher average wage for U.S.-naturalized nannies (\$10.74) compared to U.S.-born nannies (\$9.40). *Id.*

58. *CPI Inflation Calculator*, U.S. BUREAU LAB. STATS., https://www.bls.gov/data/inflation_calculator.htm [<https://perma.cc/AD3M-G77W>] (enter "9.41" into box labeled "\$", set dates to

of domestic workers conducted by the National Domestic Workers Alliance (“NDWA”) found higher wage rates, reporting nannies’ median wage at eleven dollars per hour (the inflation-adjusted equivalent of about twelve dollars in 2017 and over fifteen dollars in 2024).⁵⁹ Many of the NDWA workers reported wages that fell below the minimum wage.⁶⁰ Notably, several experts we interviewed mentioned that nannies’ pay increased in the wake of the COVID-19 pandemic, even beyond general inflation.⁶¹

Table 1: Nanny Demographics
(summarizing information above)

Demographic	Nannies Generally
Female	98%
White	69%
U.S.-Born	75%
U.S.-Born or Naturalized	82%
Associate Degree or Higher	45%
Hourly pay	\$12 to \$15 (adjusted to 2024 dollars)

convert from May 2017 to May 2024 dollars, then click “Calculate”). For this and related calculations, we impute May as the wage month for both years.

59. BURNHAM & THEODORE, *supra* note 7, at 18 tbl.1; *CPI Inflation Calculator*, *supra* note 58 (enter “11” into box labeled “\$”, set dates to convert from May 2011 to May 2017 dollars, then click “Calculate”; change dates to convert from May 2011 to May 2024 dollars, then click “Calculate”). That survey also found that live-in nannies earned significantly less than the average, with a reported median hourly wage of \$6.76. BURNHAM & THEODORE, *supra* note 7, at 18 tbl.1.

60. BURNHAM & THEODORE, *supra* note 7, at 19. The percentage of nannies receiving less than the minimum wage (28%) was higher than that for both caregivers (27%) and housecleaners (20%). *Id.* at 18–19.

61. See Zoom Interview with Tom Breedlove, Senior Dir. Bus. Dev., Care.com HomePay (Sept. 12, 2023); Zoom Interview with Marcia Hall, Exec. Dir., Int’l Nanny Ass’n (Aug. 21, 2023).

Nannies report a variety of workplace challenges.⁶² These include exposure to illness,⁶³ insufficient sleep,⁶⁴ and very long hours.⁶⁵ The NDWA report, as well as our expert interviews, explained that families often fail to keep accurate time records, which makes it difficult for nannies to enforce prior agreements regarding hours or request proper overtime pay.⁶⁶

While these data sources provide outlines of the U.S. nanny population, they tell us little about nannies' preferences or behaviors with regard to work formality and tax reporting. The following Section describes the limited research in this area.

2. Tax Behavior of U.S. Nannies

Existing research overlooks nannies' tax behavior, preferences, and experiences. However, two empirical studies focus on the tax compliance behavior of U.S. parent-hirers.⁶⁷ Bloomquist and An, as well as Erard, use IRS data to estimate compliance levels and patterns across different geographic and demographic correlates.⁶⁸

Bloomquist and An analyze Schedule H (household employer) filing data from 1996 to 2003, during which the number of Schedule H filings declined every year from over 300,000 to just under 235,000.⁶⁹ Using a simple regression analysis, they unsurprisingly find that Schedule H filing rates are positively correlated with an area's percentages of high-income households, married couples filing joint tax returns, and Federal employment.⁷⁰ Although the study does not speak to parent-hirer compliance directly, much less

62. See, e.g., Nik Theodore, Beth Gutelius & Linda Burnham, *Workplace Health and Safety Hazards Faced by Informally Employed Domestic Workers in the United States*, 67 WORKPLACE HEALTH & SAFETY 9, 12–14 tbl.3 (2019) (disaggregating reports of skin irritation, breathing troubles, wrist and shoulder pains, and back injuries for nannies and caregivers not affiliated with workers rights' organizations).

63. Thirty-six percent of nannies in the 2012 survey reported contracting an illness at work during the prior twelve months, compared to a rate of twenty-five percent for caregivers. BURNHAM & THEODORE, *supra* note 7, at 30.

64. Twenty-five percent of live-in domestic workers (including nannies, housecleaners, and caregivers) reported sleeping less than five hours at some point in the prior workweek due to work responsibilities. *Id.*

65. The 2012 NDWA survey found that forty percent of nannies reported working more than forty hours per week for their primary hirer. *Id.* at 26.

66. *Id.*; see discussion *infra* Section II.C.2.

67. See Erard, *supra* note 13, at 189 (“perform[ing] a systematic and detailed analysis of the extent to which household employers fail to comply with their Federal Nanny Tax obligations”); Bloomquist & An, *supra* note 32, at 27 (“identify[ing] factors associated with Schedule H filing and . . . determin[ing] if [the] factors can account for the recent decline in filing activity”).

68. Erard, *supra* note 13, at 196–97 (analyzing Schedule H filings); Bloomquist & An, *supra* note 32, at 26–38.

69. Bloomquist & An, *supra* note 32, at 27. While the authors concede that they are unable to estimate the *expected* number of Schedule H filers, they provide ratios between the number of Schedule H filers and individual income tax filers for hundreds of three-digit zip code areas. *Id.* at 35–36.

70. *Id.* at 35–36.

nannies' preferences for formality, it identifies key correlates of the nanny tax across America.⁷¹

Erard provides a more recent but similarly parent-hirer-focused analysis. Erard moves beyond Bloomquist and An by estimating the *expected* number of household employers who should be filing.⁷² To do so, Erard uses CPS data to isolate workers in private households and then estimates 1.8 million domestic workers (550,000 of whom are child caregivers) and nearly four million hirers (823,000 for child caregivers specifically).⁷³ Given the actual number of Schedule H filings in 2015—fewer than 191,000—Erard estimates a compliance rate of about five percent.⁷⁴ Confirming the trend identified by Bloomquist and An, Erard documents a steady decline in household employer filings.⁷⁵

One exception to the parent-hirer focus is an unpublished doctoral dissertation by Catherine Haskins, which is based on ethnographic fieldwork and semi-structured interviews with nannies and full-time housekeepers as well as their hirers in Washington, D.C.⁷⁶ Haskins found that “lack of awareness, tax complexity, social norms of noncompliance, and poor personal ethics diminish payroll tax payment; concern over one’s job, personal ethics and altruistic concern for the employee motivate [hirer] compliance.”⁷⁷ While Haskins carefully considered the tax classification and compliance tradeoffs in domestic workers’ negotiations with hirers, they were not a primary focus of her research.

A related category of tax scholarship addresses the “gig” economy. The domestic sector aptly has been called “the original gig economy” because of its structural similarities with high-tech sectors like ride-sharing.⁷⁸ However, the domestic sector is largely overlooked, whether by doctrinal and policy-oriented tax scholarship or by legislation addressing platform-based contract

71. *Id.* at 37.

72. *See* Erard, *supra* note 13, at 197 (comparing the actual number of Schedule H returns filed for 2015 with a carefully calibrated estimate of household employers to ultimately estimate nanny compliance).

73. *Id.*

74. *Id.*

75. *Id.*

76. *See generally* Haskins, *supra* note 45 (analyzing interviews with nannies to understand reasons for parent noncompliance with tax reporting).

77. *Id.* at vi. Our findings confirm some of Haskins’s conclusions. *See* discussion *infra* Part II.

78. Ilana Turner, *California’s New Gig Worker Protections Leave Domestic Workers Behind*, UNIV. MINN.: GENDER POL’Y REP. (Jan. 7, 2020), <https://genderpolicyreport.umn.edu/californias-new-gig-worker-protections-leave-domestic-workers-behind> [<https://perma.cc/N7GP-TYCA>].

work's challenges.⁷⁹ Much of this scholarship focuses on more visible workers, including ride-share drivers and others who find work via mobile applications.⁸⁰

By contrast, our focus is on the portion of this population that labors, by definition, behind closed doors. Our project begins to fill the literature's gaps and, in doing so, raises the profile of nannies' tax challenges. We hope that these challenges might be considered on their own merits as well as within the overarching conversation about taxing and supporting gig workers.

B. THE TAX AND LABOR LANDSCAPE OF NANNY WORK

1. Tax and Worker Classification Rules

All workers—even informal (“off the books” or “under the table”) workers—are either “employees” or “independent contractors.” The tax reporting requirements that adhere to domestic hirers depend on how the worker is properly classified. The definition and consequences of each status vary slightly between federal and state law as well as across states. An informal worker may avoid express (mis)classification as an employee or independent contractor—there is no employer-provided tax document expressly misclassifying the worker since there are no tax documents at all. However, if an informal worker files a formal legal complaint against their hirer or if they are audited by state or federal tax agencies, the relevant legal standards will still apply to determine that worker's classification.

Nannies should be properly classified as employees in nearly all cases.⁸¹ Classification turns largely on a question of control.⁸² For nannies, the parents typically have the right to instruct the nanny in how to care for their child, decide what equipment to use, and provide that equipment if necessary. They also typically determine the nanny's hours and provide their place of work (typically the child's home). Contrast this with an independent contractor

79. Kathleen DeLaney Thomas, *Taxing the Gig Economy*, 166 U. PA. L. REV. 1415, 1417 n.2 (2018) (discussing the “gig economy” defined as “the collection of markets that match providers to consumers on a gig (or job) basis in support of on-demand commerce” (quoting SARAH A. DONOVAN, DAVID H. BRADLEY & JON O. SHIMABUKURO, CONG. RSCH. SERV., R44365, WHAT DOES THE GIG ECONOMY MEAN FOR WORKERS? 1 (2017))); Shu-Yi Oei & Diane M. Ring, *The Importance of Qualitative Research Approaches to Gig Economy Taxation*, in BEYOND THE ALGORITHM: QUALITATIVE INSIGHTS FOR GIG WORK REGULATION 82, 82–83 (Deepa Das Acevedo ed., 2021).

80. Thomas, *supra* note 79, at 1418 (focusing mainly on workers earning money on online platforms like Uber and TaskRabbit); Shu-Yi Oei & Diane M. Ring, *The Tax Lives of Uber Drivers: Evidence from Internet Discussion Forums*, 8 COLUM. J. TAX L. 56, 56 (2017) (“investigat[ing] the tax issues and challenges facing Uber and Lyft drivers”).

81. See Desiree Leung, *Why Household Employers Shouldn't Give a 1099 to a Nanny or Caregiver*, CARE: HOMEPAY (Aug. 20, 2024), <https://www.care.com/hp/1099-vs-employee-why-the-difference-matters-when-you-hire-a-caregiver> [<https://perma.cc/SC39-MR6Q>] (explaining why nannies are considered employees under tax and labor laws).

82. See *Worker Classification 101: Employee or Independent Contractor*, IRS (Aug. 2, 2022), <https://www.irs.gov/newsroom/worker-classification-101-employee-or-independent-contractor> [<https://perma.cc/3KVX-U7ZG>].

who decides how their work is done, brings their own equipment, and offers their services broadly to others.⁸³

Although nearly all nannies will be properly classified as employees, many families improperly classify them as independent contractors. The following discussion briefly explores the stakes of this misclassification by explaining the different tax reporting and employment obligations that apply to each worker status. It also discusses the consequences of informal work, where the hirer fails to report a worker's pay.

Employee classification. Classifying a worker as an employee (and hirer as an employer) imposes tax and other legal obligations on the employer; it also provides social insurance benefits and workplace protections to the employee. First, the employer, depending on the state of residence and hours worked, is liable for the employer's share of the worker's payroll taxes⁸⁴ for contributions to social insurance programs, including unemployment insurance, state disability insurance, Social Security (both retirement and disability), Medicare, and worker's compensation.⁸⁵ Second, the employer is required to withhold and remit the employee's share of payroll taxes. Doing both of these things typically requires calculating these amounts, navigating multiple forms (both federal and state), and meeting reporting deadlines—or contracting with a payroll service to do them. While other employers are also required to withhold workers' income taxes, federal income tax withholding is optional for domestic workers' employers.⁸⁶ Third, with employee classification for labor and employment purposes (which uses a similar approach to classification

83. See IRS PUBLICATION 926 FOR 2024, *supra* note 14, at 4 (“A self-employed worker usually provides their own tools and offers services to the general public in an independent business.”).

84. The “legal incidence” of payroll taxes falls on the employer, meaning the employer is the party that must remit the taxes to the state. See 26 U.S.C. §§ 3111–3113 (2018) (describing the employer portion of payroll taxes). However, the “economic incidence”—referring to who bears the actual cost of the tax—may fall on the employer or the worker (in the form of reduced wages) or be split between the two. See, e.g., Don Fullerton & Gilbert E. Metcalf, *Tax Incidence*, in 4 HANDBOOK OF PUBLIC ECONOMICS 1787, 1821–22 (Alan J. Auerbach & Martin Feldstein eds., 2002) (discussing several studies finding the total economic burden of payroll taxes falls largely on employees); Emmanuel Saez, Benjamin Schoefer & David Seim, *Payroll Taxes, Firm Behavior, and Rent Sharing: Evidence from a Young Workers' Tax Cut in Sweden*, 109 AM. ECON. REV. 1717, 1717–18, 1722 (2019) (analyzing a payroll tax cut for young workers in Sweden to describe how cutting the employer portion of payroll taxes can combat high unemployment rates for “low earners, the young, or the elderly”).

85. 26 U.S.C. § 3101(a)–(b) (creating a tax for Social Security and Medicare); 26 U.S.C. § 3121; *Disability Insurance Eligibility Requirements*, CAL. EMP. DEV. DEP'T, CA.GOV, https://edd.ca.gov/en/disability/Am_I_Eligible_for_DI_Benefits [<https://perma.cc/8658-2753>] (discussing employee status and noting that potentially misclassified workers “should still apply for DI and let us decide your eligibility”); *Types of Claims*, CAL. EMP. DEV. DEP'T, CA.GOV, https://edd.ca.gov/en/unemployment/types_of_claims [<https://perma.cc/6HGT-TW5V>] (noting that “claims are based on wages earned from employers”); CAL. LAB. CODE § 3352(a)(8)(A) (West 2011 & Supp. 2024) (excluding only those workers who have worked less than fifty-two hours in the last ninety days).

86. IRS PUBLICATION 926 FOR 2024, *supra* note 14, at 9 (“You're not required to withhold federal income tax from wages you pay a household employee.”). We are not aware of research that estimates what proportion of household employers opt to withhold income taxes for their employees, as this adds an extra layer of complexity.

for tax purposes), the employer is bound by various state and federal labor protections including minimum wage and labor laws and applicable antidiscrimination statutes.⁸⁷

Examining merely the statutory rules glosses over the necessary administrative processes for compliance. Domestic employers are subject to many of the same administrative requirements as nondomestic employers, many of which can be burdensome in a nonbusiness setting. For instance, federal law requires employers to obtain an Employer Identification Number (“EIN”) in order to pay workers’ payroll taxes.⁸⁸ States then also require that domestic employers register as an employer with state tax and employment agencies in order to pay any state payroll taxes and meet other state-level obligations.⁸⁹ Thus, employers must report workers’ wages annually at the federal level and often quarterly at the state level.⁹⁰ Federal and state governments impose obligations at different thresholds, such that a parent-hirer may have an obligation to report wages and remit payroll taxes to the state tax agency but not the IRS (and potentially vice versa).⁹¹

Beyond tax obligations, some states and cities require domestic employers to provide workers with posters or flyers detailing their workplace rights.⁹² More recently, some states have begun to require that domestic employers provide workers with a written contract detailing schedule, hours, pay, and other important work details.⁹³ The U.S. Department of Labor (“DOL”) has also developed and posted a sample agreement, though no such agreement is required under federal law.⁹⁴

One of the authors (Ariel Jurow Kleiman) can confirm, based on personal experience, that it is indeed quite complicated to correctly report domestic

87. See Sarkar, *supra* note 12, at 13–17.

88. IRS PUBLICATION 926 FOR 2024, *supra* note 14, at 11.

89. See, e.g., *Household Employers*, CAL. TAX SERV. CTR., CA.GOV, https://www.taxes.ca.gov/Payroll_Tax/household.html [<https://perma.cc/W4EP-J893>] (providing that “[a] household employer must report when he/she employs one or more individuals to perform work and pays cash wages of \$750 or more in a calendar quarter” and must “register with the Employment Development Department” within fifteen days of meeting the payment threshold).

90. See EMP. DEV. DEP’T, STATE OF CAL., 2023 CALIFORNIA EMPLOYER’S GUIDE 15 (2023), https://edd.ca.gov/siteassets/files/pdf_pub_ctr/de44-23.pdf [<https://perma.cc/AD55-Z88L>] (discussing quarterly estimated payments).

91. Compare *Household Employers*, *supra* note 89 (requiring that household employers remit payroll taxes if they pay a worker \$750 or more in any calendar quarter), with IRS PUBLICATION 926 FOR 2024, *supra* note 14, at 5 (requiring that household employers remit payroll taxes if they pay a worker \$1,000 or more in any calendar quarter or \$2,700 or more over the year).

92. See, e.g., Desiree Leung, 2024 Nevada Household Employment Tax and Labor Law Guide, CARE: HOMEPAY (Aug. 23, 2024) [hereinafter 2024 Nevada Guide], <https://www.care.com/hp/nevada-nanny-taxes> [<https://perma.cc/VJU5-27Q3>]; Desiree Leung, 2024 California Household Employment Tax and Labor Law Guide, CARE: HOMEPAY (Aug. 22, 2024) [hereinafter 2024 California Guide], <https://www.care.com/hp/california-nanny-taxes> [<https://perma.cc/5KGX-C3NG>].

93. See, e.g., 2024 Nevada Guide, *supra* note 92; 2024 California Guide, *supra* note 92; Desiree Leung, 2024 Massachusetts Household Employment Tax and Labor Law Guide, CARE: HOMEPAY (Aug. 22, 2024), <https://www.care.com/hp/massachusetts-nanny-taxes> [<https://perma.cc/TZ7B-B29M>].

94. Sample Employment Agreements for Domestic Workers, U.S. DEP’T LAB., WOMEN’S BUREAU, <https://www.dol.gov/agencies/wb/Domestic-Workers> [<https://perma.cc/BM3G-5L34>].

workers' income, especially at the state level. In California, doing so requires registering as an employer with the Employment Development Department, maintaining an employer online account, filing quarterly wage reports, and filing and paying taxes at the end of the year.⁹⁵ Despite Professor Jurow Kleiman's expertise in state and federal tax law, as well as years of experience representing taxpayers in tax controversies, her failure to properly comply with the complex filing requirements led the Franchise Tax Board to (incorrectly) assess unpaid taxes. Although she was able to correct the error quickly, such an episode would likely cause significant stress for laypeople.

Independent contractor classification obligations. (Mis)classifying a nanny as an independent contractor eliminates some employment-based legal obligations and shifts others to the worker. We highlight three independent contractor considerations: their payroll tax obligations are less than that owed for an employee (aggregating the employee and employer's shares), the parent-hirer need not withhold their taxes, and they face exclusion from legal protections.

First, the parent-hirer has no payroll-tax payment obligations for independent contractors. Instead, the workers themselves must remit the full portion of payroll taxes, called "self-employment income" taxes.⁹⁶ With respect to Social Security and Medicare, the independent contractor shoulders the full obligations owed for an employee, composed of the employee and the employer's share.⁹⁷ Independent contractors thus face a double burden (if economic incidence tracks legal incidence). However, unemployment insurance, state workers' compensation insurance, and state disability insurance are either unavailable or nonmandatory for nonemployees.⁹⁸ This implies that, for a given pay amount, the self-employment taxes owed in respect of an independent contractor will be lower than the total payroll taxes owed in respect of an employee. The *joint* tax costs are thus lower for independent contractors than for employees because of the reduced work-related social insurance for independent contractors.

Second, the parent-hirer has no tax withholding requirements and only minimal reporting obligations.⁹⁹ She must send only a Form 1099-NEC to the IRS at the end of the year.¹⁰⁰ The process is administratively much simpler as well. For one, in contrast to reporting employee wages, the hirer need not send duplicate information to the state tax agency in most cases. Under the Combined Federal/State Filing ("CF/SF") Program, the IRS shares independent

95. See *Household Employers*, *supra* note 89 (listing quarterly and annual filing requirements for household employers).

96. 26 U.S.C. § 1401.

97. *Id.*

98. During the coronavirus pandemic, unemployment insurance was temporarily extended to independent contractors. Coronavirus Aid, Relief, and Economic Security Act, Pub. L. No. 116-136, § 2102, 134 Stat. 281, 313-15 (2020) (codified at 15 U.S.C. § 9021).

99. *Reporting Payments to Independent Contractors*, IRS (Aug. 22, 2024), <https://www.irs.gov/busbusinesses/small-businesses-self-employed/reporting-payments-to-independent-contractors> [https://perma.cc/9UFH-EAC4].

100. *Id.*

contractor pay information with states.¹⁰¹ Additionally, the hirer need not obtain an EIN, register as an employer with federal or state agencies, or file quarterly wage reports.¹⁰²

Third, *bona fide* independent contractors are excluded from most legal protections that apply to employees, including minimum wage and collective bargaining protections.¹⁰³ They are self-employed business owners with the same contractual freedoms (including freedom from workplace protections) as other entrepreneurs.

Informal status. Framing worker classification as binary and elective glosses over the complicating role of informality. Many parent-hirers fail to report their nanny's pay for tax purposes, which renders the nanny informal. By doing so, parent-hirers evade their employment tax payment and reporting obligations. In most cases, they also relegate the nanny to *de facto* independent contractor status for tax purposes.¹⁰⁴ Unless she boldly alerts the IRS to her hirer's choice to misclassify her¹⁰⁵ and reports a missing W-2,¹⁰⁶ she will have to pay the entire self-employment tax burden herself. Each of these steps would cause the IRS to contact the employer for further information.¹⁰⁷

Even if a nanny for whom no pay is reported by the employer complies with her federal self-employment tax obligations, as an independent contractor, she will not be eligible for unemployment insurance, state disability insurance, or workers' compensation. If the nanny decides *not* to comply and fails to report her income, she forfeits credit for Social Security and Medicare benefits tied to the work as well.¹⁰⁸

101. *Topic No. 804, FIRE System Test Files and Combined Federal/State Filing (CF/SF) Program*, IRS (July 3, 2024), <https://www.irs.gov/taxtopics/tc804> [<https://perma.cc/LU4H-3M4B>] (listing Form 1099-NEC).

102. *Reporting Payments to Independent Contractors*, *supra* note 99.

103. V.B. Dubal, *Wage Slave or Entrepreneur?: Contesting the Dualism of Legal Worker Identities*, 105 CALIF. L. REV. 65, 67, 80–104 (2017) (discussing the legal history and consequences of being deemed an “independent contractor”).

104. The proper classification would remain an employee. *See supra* notes 81–83 and accompanying text.

105. To do so, the worker would submit Form SS-8, Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding. *See* INTERNAL REVENUE SERV., INSTRUCTIONS FOR FORM SS-8, at 1–2 (2024) [hereinafter INSTRUCTIONS FOR FORM SS-8], <https://www.irs.gov/pub/irs-pdf/iss8.pdf> [<https://perma.cc/7BMR-R224>].

106. Taxpayers who haven't received a W-2 can report it missing on Form 4852. *What to Do When a W-2 or Form 1099 Is Missing or Incorrect*, IRS (Feb. 28, 2023), <https://www.irs.gov/newsroom/what-to-do-when-a-w-2-or-form-1099-is-missing-or-incorrect> [<https://perma.cc/7JQT-C4VK>].

107. *Id.*; INSTRUCTIONS FOR FORM SS-8, *supra* note 105, at 3–4.

108. In some cases, informal workers can remedy unreported earnings at a later time. For instance, in the United States, workers can correct their earnings record with the Social Security Administration by providing proof of prior earnings. However, when the nonpayment spans many years, even decades, substantiating the unreported earnings can be very difficult and pose an insurmountable bar. *See* Luz Arévalo, Michael Dunn & Robert W. Alcorn, *Who Said Your Immigrant Client Cannot Get Credit for Social Security Payments?*, 19 BENDER'S IMMIGR. BULL. 1181, 1181–82, 1182 n.12 (2014) (describing the broader reconciliation and “unscrambling” process for practitioners working with immigrants who may want to establish Social Security eligibility based on quarters of undocumented work); Shayak Sarkar, *Capital Controls as Migrant Controls*,

Administratively, for nannies, preparing a tax return as an employee is more straightforward than filing as an independent contractor.¹⁰⁹ Employees simply file a Form 1040 (and its state equivalent) using the information on their end-of-year W-2. In contrast, filing as an independent contractor requires nannies to estimate the taxes they will owe and pay the government quarterly—or get hit with a bill and penalties at tax time.¹¹⁰ It may also mean saving financial documents throughout the year, for instance, if the nanny plans to deduct any expenses from her gross income. Alongside the more robust social insurance and labor protections, these factors might lead nannies to prefer employee status despite the relatively higher joint tax cost. We explore these factors, and others, below in Part II.

In sum, employee classification carries the highest joint tax cost and saddles parent-hirers with rule complexity and administrative work. But it may help provide workers with robust social insurance and labor protections. Independent contractor classification carries lower joint tax-related costs and administrative burdens but also fewer social insurance benefits. Informal status effectively carries no tax cost for the hirer, and if a nanny chooses not to report, there is no tax cost for the nanny but also no social insurance.

One might assume that both hirers and workers would prefer either informal status without tax reporting or independent contractor status with tax reporting: At least one of them could be made better off by pocketing the tax savings or they might bargain to split the savings between hirer and worker. However, many considerations cut against any simple conclusion based on tax costs alone. For one, workers may derive significant value from future social insurance benefits available to formal workers, and specifically to employees.¹¹¹ This value depends on many factors, including the workers' age, immigration status, household income, and personal preference. For lower-income workers, a need for more cash up-front may outweigh the future value of such benefits.¹¹²

109 CALIF. L. REV. 799, 824–25 (2021) (discussing the contentious place of “scrambling” and Social Security eligibility in immigration reform debates).

109. Filing as an independent contractor requires using a Schedule C. See 2023 *Instructions for Schedule C*, IRS (Jan. 31, 2024), <https://www.irs.gov/instructions/i1040sc> [<https://perma.cc/Q7DD-TZWK>]. Tax preparers and tax software often charge a higher fee to prepare a return with a Schedule C.

110. See 26 U.S.C. § 6654; see also Thomas, *supra* note 79, at 1422 (discussing the implications of there being “no employer to withhold income taxes during the course of the year”).

111. It is also possible that some employers independently value their provision of these workplace protections and social insurance benefits to workers—this is a ripe subject for future work.

112. We might say that some workers may have a high discount rate, which causes them to value money in the current period far more than money they might receive in the future. See Leandro S. Carvalho, Stephan Meier & Stephanie W. Wang, *Poverty and Economic Decision-Making: Evidence from Changes in Financial Resources at Payday*, 106 AM. ECON. REV. 260, 269–72 (2016) (discussing discount rates among low-income individuals); Julia Lynn Coronado, Don Fullerton & Thomas Glass, *The Progressivity of Social Security* 24–25 (Nat'l Bureau of Econ. Rsch., Working Paper No. 7520, 2000) (incorporating the possibility of high discount rates when valuing future Social Security benefits).

2. Unique Enforcement Norms

Despite high reported levels of noncompliance, enforcement of the formal nanny tax rules is lax.¹¹³ Although IRS enforcement is broadly uncommon, nonenforcement in the domestic space has certain singular explanations. The first is the historic exclusion of all domestic workers from social insurance programs and worker protection statutes, reflecting a legacy of racial discrimination and present-day acceptance of racialized, gendered, and national-origin-based social and economic domination.¹¹⁴ This prior exclusion may have caused a sort of norms-based path dependency, paving the road to present-day nonenforcement. Second, lax enforcement may reflect a tacit decision by the IRS to allow noncompliance as a subsidy to parent-hirers. Third, it may reflect policymakers' and regulators' discomfort with entering a private (and often feminine) space.

Domestic workers historically have been excluded from many workplace protections and social insurance programs: from the early versions of the Fair Labor Standards Act ("FLSA") to even the current versions of the Occupational Safety and Health Act ("OSHA") and National Labor Relations Act ("NLRA").¹¹⁵ They are also *de facto* excluded from Title VII of the Civil Rights Act due to the employer size minimum.¹¹⁶ Scholars have argued that this exclusion reflects marginalization by race, gender, and national origin, as domestic workers are and have traditionally been women, nonwhite, and disproportionately likely to be foreign-born.¹¹⁷ The current battle to protect gig workers continues this trajectory by largely excluding domestic workers.¹¹⁸ This lack of labor protections in the domestic workspace may have contributed to a norm of informality.¹¹⁹ Nonenforcement of labor-related tax rules aligns with and reinforces these norms.

113. See *supra* note 17 and accompanying text; Cohen-Whelan, *supra* note 18, at 1200 ("The IRS has failed to diligently enforce the nanny tax provisions."); David Cay Johnston, *Despite an Easing of Rules, Millions Evade 'Nanny Tax'*, N.Y. TIMES (Apr. 5, 1998), <https://www.nytimes.com/1998/04/05/business/despite-an-easing-of-rules-millions-evade-nanny-tax.html> (on file with the *Iowa Law Review*). Note that, although these articles are over two decades old, the issues are the same today. Seemingly nothing has changed except that we are no longer surprised by this widespread tax evasion.

114. See Smith, *supra* note 12, at 854–58.

115. *Id.* at 889, 920 n.420.

116. There may nonetheless be state-level inclusions or efforts to pass inclusions. See, e.g., *supra* note 12 and accompanying text; S.B. 686, 2023 Leg., Reg. Sess. (Cal. 2023) (vetoed by Gov. Newsom in 2024); see Shayak Sarkar, *Intimate Employment*, 39 HARV. J.L. & GENDER 429, 436 (2016) (discussing the various federal statutory exclusions including the more-inclusive 1974 FLSA amendments).

117. See, e.g., Robert C. Lieberman, *Race, Institutions, and the Administration of Social Policy*, 19 SOC. SCI. HIST. 511, 512–14 (1995). *But see* Larry DeWitt, *The Decision to Exclude Agricultural and Domestic Workers from the 1935 Social Security Act*, SOC. SEC. BULL., Nov. 2010, at 49, 49.

118. See Turner, *supra* note 78.

119. See AMELITA KING-DEJARDIN, INT'L LAB. ORG., FORMALIZING DOMESTIC WORK 15 (2016) ("Exclusion from, or falling outside the scope of regulatory frameworks, is a key manifestation of informality.").

It is also possible that the IRS and policymakers have tolerated noncompliance because doing so allows parent-hirers to afford childcare on the cheap.¹²⁰ To the extent this is true, lax enforcement of nanny classification and tax reporting can be seen as subsidizing informal nanny care as compared to formal nanny care. Political power dynamics may influence the decision-making here as well. If enforcement is seen as assisting marginalized, largely nonunionized worker populations and burdening high-income, potentially powerful constituencies, decision makers may shy away from tough enforcement.

Additionally, policymakers and regulators have long been uncomfortable enforcing tax laws and labor laws in private homes.¹²¹ There is a longstanding bias in the tax system against treating in-home labor as formal labor.¹²² Some of this discomfort may stem from the perception of in-home work as “women’s work.”¹²³ More practically, the often-invisible nature of domestic work may make enforcement more difficult than against a business hirer who must report workers’ pay to claim business deductions.¹²⁴

Norms may be changing, however. The work of advocacy organizations like the NDWA and Hand-in-Hand,¹²⁵ as well as the advent of domestic payroll companies, may be increasing general awareness of parent-hirers’ obligations and nannies’ workplace rights.¹²⁶ This growing awareness has led to notable state-level policy changes like Domestic Workers Bills of Rights, which have been enacted in ten states (and three cities) so far, including California, New

120. See Letter from Gavin Newsom, Governor of Cal., to the Members of the Cal. State Senate (Sept. 30, 2023), <https://www.gov.ca.gov/wp-content/uploads/2023/09/SB-686-Veto-Message.pdf> [<https://perma.cc/FR23-U6CY>] (“The households that employ domestic workers include middle- and low-income families and older Californians . . . [T]his bill creates severe cost burdens and penalties for many people who cannot afford them.”).

121. Consider California Governor Gavin Newsom’s explanation for vetoing additional protections for domestic workers. *Id.* (“[N]ew laws in this area must recognize that private households and families cannot be regulated in the exact same manner as traditional businesses.”); see also PIERRETTE HONDAGNEU-SOTELO, *DOMÉSTICA: IMMIGRANT WORKERS CLEANING AND CARING IN THE SHADOWS OF AFFLUENCE* 9 (2001) (noting that paid domestic work “is often not recognized as employment because it takes place in a private home”).

122. For a foundational discussion of the tax system’s devaluing of nonmarket in-home work, see Nancy C. Staudt, *Taxing Housework*, 84 *GEO. L.J.* 1571, 1571–75 (1996).

123. See HONDAGNEU-SOTELO, *supra* note 121, at 9 (arguing that domestic work is often not considered employment in part because “the tasks that domestic workers do . . . are associated with women’s ‘natural’ expressions of love for their families”); SILVIA FEDERICI, *WAGES AGAINST HOUSEWORK* 1 (1975) (“They say it is love. We say it is unwaged work.”).

124. Note, however, that hirers may illegally try to claim tax deductions by placing personal nannies on a family business’s payroll. See Zoom Interview with Rocío Alejandra Ávila, Senior Emp. L. Couns. & State Pol’y Dir., Nat’l Domestic Workers All. (Aug. 28, 2023).

125. *Our Work*, NAT’L DOMESTIC WORKERS ALL., <https://www.domesticworkers.org/programs-and-campaigns> [<https://perma.cc/GAH7-A4KV>]; *About Us*, HAND IN HAND, <https://domesticemployers.org/about> [<https://perma.cc/BNqD-MM2F>] (describing Hand in Hand as “a national network of employers . . . working for dignified and respectful working conditions that benefit the employer and worker alike”).

126. Several experts made this point in interviews. See *infra* notes 208–13 and accompanying text.

York, Massachusetts, Pennsylvania, and Virginia, among others.¹²⁷ However, domestic workers may also continue to be unaware of their own rights and access to enforcement mechanisms.¹²⁸ There is also some evidence that the norm of informality is sticky, despite recent legal changes.¹²⁹

This context brings us to a core question raised by our research: Should there be increased nanny tax enforcement? Before advocating for a crackdown (which has many points of appeal), policymakers and advocates should identify the key questions to consider, as well as nannies' basic interests and vulnerabilities. The next Part presents the results of a multi-method study that seeks to do so.

II. RESEARCH FINDINGS

Our two-pronged research approach comprises both a survey of nannies' tax preferences and experiences and an analysis of nannies' tax-related posts on Reddit. To provide further context for our research, we also interviewed fifteen subject matter experts about common challenges faced by nannies, industry norms, and the experts' preferred policy reforms.

We found strong preferences for formal employee status among surveyed nannies, who represented a white, female demographic with work authorization and some higher education. We also found that this demographic often had a strong understanding of both their employer's and their own tax obligations. Our Reddit analysis corroborated these general findings but exposed tax conflicts with employers. Our expert interviews added some nuance to our survey and Reddit results: They underscored that there is significant diversity in nannies' preferences and experiences.

A. NANNY SURVEY

1. Survey Design

We administered a survey of domestic workers during the summer and early fall of 2023. The anonymous survey was estimated to require twenty minutes (though actual completion times were closer to half that length).¹³⁰ The survey questions concerned nannies' experiences and preferences pertaining to tax filing and worker classification.

The inclusion criteria for our study were as follows. First, participants encountered screening questions, asking whether they (1) worked for pay taking care of children unrelated to them, (2) for at least eight weeks in 2022

127. *Domestic Workers Bill of Rights*, NAT'L DOMESTIC WORKERS ALL., https://www.domesticworkers.org/programs-and-campaigns/developing-policy-solutions/domestic-workers-bill-of-rights/#domestic_workers_bill_of_rights_and_protections_in_each_state [<https://perma.cc/2F5V-4MFD>].

128. See, e.g., RHEENA PARIKH, BOS. COLL. C.R. CLINIC & BRAZILIAN WORKER CTR., *MAKING IT WORK FOR WORKERS: A STUDY ON THE EFFICACY OF THE MASSACHUSETTS DOMESTIC WORKERS BILL OF RIGHTS* 14–17 (2023) (describing how a worker center survey revealed lack of awareness of the Massachusetts Domestic Workers' Bill of Rights and lack of knowledge of avenues of redress).

129. *Id.*

130. Given our focus on tax preferences and experiences, we made the surveys anonymous—no names were solicited, nor did we ask for home addresses to verify geographic eligibility.

or 2023, (3) were paid by an individual hirer rather than an agency, (4) were not working for the hirer's home-based business, (5) worked at least twenty hours per week, and (6) had an age of at least eighteen. After answering all screening questions affirmatively, participants received a consent form providing further survey details, including risks and information about Institutional Review Board ("IRB") review and approval.¹³¹ We compensated eligible participants who completed the survey with a twenty-five-dollar Visa gift card.

The eligibility/screening criteria were designed to capture the group of workers colloquially referred to as nannies, with individualized connections to the children in their care and the parent-hirers. Such nannies can be distinguished from childcare workers in congregate settings, who have larger numbers of children in their care, third-party (nonparent/guardian) employment relationships, and correspondingly less control exerted by individual parents/guardians.¹³² They are also distinct from licensed family childcare home providers, who care for multiple children in their own homes rather than in the home of an individual child.¹³³

After consenting to participation, eligible participants proceeded to a five-section survey. The first and lengthiest section asked about nannies' preferences, recent experiences, and understandings surrounding worker classification status, tax filing, and payment.¹³⁴ The second addressed the parent-hirer's objectives in these recent work experiences and how differences in nanny-hirer preferences were resolved. The third short section briefly asked workers about taxes and tradeoffs, particularly how they valued eligibility for social insurance programs tied to tax reporting. The fourth similarly short section asked about their sense of power in worker-hirer negotiations. The fifth and final section asked for demographic background, including education, race/ethnicity, language proficiency, and authorization to work in the United States.

2. Recruitment

We used three primary methods to recruit respondents. First, we contacted multiple Southern California domestic workers' organizations and affiliated parties (lawyers and researchers focused on domestic work) to distribute links to our surveys in both English and Spanish (generating "survey link data"). Second, we posted QR codes to the surveys on removable tabs in Los Angeles County parks and libraries where nannies were known to congregate (generating

131. The survey was approved by the IRBs at all three authors' institutions.

132. See, e.g., CAL. CODE REGS. tit. 22, § 102416.5 (2024) (describing staffing ratio requirements at "Small Family Child Care Homes").

133. *Family Child Care Homes*, CHILDCARE.GOV, <https://childcare.gov/consumer-education/family-child-care-homes> (on file with the *Iowa Law Review*) (defining "family child care homes").

134. Unfortunately, the survey did not ask explicitly about some of the hybrid formal/informal arrangements (paying for overtime "off the books;" partial reporting of regular wage income) that we only learned about from the later Reddit analysis and expert interviews.

“Park QR code data”).¹³⁵ These tabs were at the bottom of 8” x 11” posters containing both a stroller image as well as a few screening questions. Third and finally, we solicited responses at Nannypalooza (generating “Nannypalooza QR code data”), an annual two-day professional conference held in the greater Washington, D.C. area.¹³⁶ We hosted a chat area at Nannypalooza to distribute our survey QR codes (in English and in Spanish, though only the English code was used) that would allow attendees to take the same survey as the Los Angeles respondents.¹³⁷ We did this by displaying a poster with the QR codes alongside a brief description of the research project and offering snacks.

The survey link data ultimately raised data quality issues.¹³⁸ The anonymity, while encouraging honesty on potentially sensitive tax issues, also may have led to unscrupulous participation by ineligible individuals seeking to complete the survey to receive the twenty-five-dollar compensation. Specifically, three irregularities raised concerns about the survey link data quality: eligibility rates,¹³⁹ completion times,¹⁴⁰ and substantive responses.¹⁴¹

135. See, e.g., *8 Amazing Los Angeles-Area Parks Every Nanny Needs on Their Radar*, WESTSIDE NANNIES, <https://westsidenannies.com/8-amazing-los-angeles-area-parks-every-nanny-needs-on-their-radar> [<https://perma.cc/EP4N-JTN4>] (listing numerous areas recommended for nannies taking their employer’s children).

136. *Conference FAQ*, NANNYPALOOZA, <https://www.nannypalooza.com/conference-faq.html> [<https://perma.cc/DM73-R7VX>]. The national conference markets itself as being “designed by a full time working nanny who understands what workshops will offer you ideas and techniques that you can use right away” with a “casual,” “fun, laid back vibe.” *Id.*

137. Given the nature of Nannypalooza, the majority of prospective participants met the screening criteria and were able to complete the full survey and receive compensation.

138. See generally Jennifer E.F. Teitcher et al., *Detecting, Preventing, and Responding to “Fraudsters” in Internet Research: Ethics and Tradeoffs*, 43 J.L. MED. & ETHICS 116 (2015) (discussing issues of fraud in internet research, including through ineligible respondents motivated by compensation, whether from within or outside the United States); Michael J. Zickar & Melissa G. Keith, *Innovations in Sampling: Improving the Appropriateness and Quality of Samples in Organizational Research*, 10 ANN. REV. ORGANIZATIONAL PSYCH. & ORGANIZATIONAL BEHAV. 315 (2023) (discussing identity verification as a common way to combat “bots” that nonetheless compromises participant rights to privacy).

139. First, while only about a third of QR responses passed the screening questions, the clear majority of those in the survey link data passed the screening questions. Since the QR-code posters described the criteria for participation and were posted in areas popular with nannies, we hypothesized that there would be greater eligibility among the QR-code users, as compared to the survey link. The empirical results in the opposite direction raised concerns.

140. Second, the completion times for those who used the survey link were half those of the QR-code users. This result is based on dropping outlying observations where the completion time was greater than thirty minutes. Because individuals were able to start the survey but then potentially complete it later, some completion times took hours and likely reflected pauses and interruptions in survey completion. The compensation motive may have led survey link participants to rapidly enter less reliable data.

141. For example, for eligible respondents who completed the survey through the link, the responses for hourly pay ranged from \$2 to \$200. We asked separately for a pay frequency and pay rate, with the former ranging from hourly to annually. We then adjusted reported daily, weekly, monthly, and hourly rates by dividing, respectively, by 8, 40, 160, and 1920.

In contrast, for the Park QR codes, the pay responses ranged from \$19 to \$35, akin to industry websites estimating Los Angeles hourly rates between \$15 and \$35. *What Does a Nanny Cost in Los Angeles?*, NANNYLANE, <https://www.nannylane.com/guide/family/identifying-your-needs/nanny-cost-los-angeles> [<https://perma.cc/HH4N-4CDU>]; see also *How Much Does a Nanny Cost*

Given these survey link data concerns, we limit our reporting to the observations from the Park QR code data and the Nannypalooza QR code data. All completed observations are from the English-language survey.¹⁴² While there may be bilingual speakers who preferred to complete the survey in English, our methods did not capture the nannies who feel more comfortable with reading and writing in Spanish as compared to English.

3. Data

In sum, fifty-seven respondents completed the survey.¹⁴³ As befits a national conference like Nannypalooza, we received multiple responses from Colorado, Georgia, Ohio, Massachusetts, Minnesota, Nebraska, North Carolina, Texas, and Washington state.

Fifty-three (93%) identified as female, one as nonbinary, and three declined to state their gender. Forty-two (about 74%) of those responding identified as both being white and not of Hispanic, Latino, or Spanish origin. Fifty (88%) of the respondents identified as having been born in the United States.¹⁴⁴ Only one of the respondents identified as having a bachelor's degree, though over half identified as having an associate degree. Fifty-three (93%) identified as live-out nannies (as opposed to living inside the employer's home or declining to answer). Fifty-six (98%) of the fifty-seven respondents identified having a Social Security number eligible for work, with the final respondent preferring not to answer. The mean reported hourly pay was just over twenty-nine dollars per hour.¹⁴⁵

in Los Angeles, CA?, CARE, <https://www.care.com/cost/nannies/los-angeles-ca> [<https://perma.cc/SQT7-7E2A>] (estimating an average base rate of \$23.26 per hour).

Admittedly, some childcare providers might be paid severely under the minimum wage (akin to fact patterns in California litigation brought by aggrieved nannies) and others paid handsomely. *Compare* *Liday v. Sim*, 253 Cal. Rptr. 3d 179, 184–86 (Cal. Ct. App. 2019) (explaining how plaintiff nanny worked eighteen hours per day on weekdays and twenty-four hours per day on the weekend for \$3000 per month, averaging less than six dollars per hour), *with* Anna Bahney, *What It Takes to Be a \$200,000-a-Year Nanny*, CNN BUS. (June 13, 2019, 3:31 PM), <https://www.cnn.com/2019/06/13/success/nanny-high-paying-job/index.html> [<https://perma.cc/ZJ6A-M4VC>] (“Families are paying [nannies] over \$220,000 a year in San Francisco,” says Anita Rogers, president and founder of British American Household Staffing. “There’s a value in paying well for your employees, especially in your household.”).

142. In the Spanish language version, we had respondents, some of whom met the eligibility criteria and answered the early questions. However, no Spanish-language surveys were completed.

143. They were able to access the QR codes through posters at a table provided to the researchers.

144. One respondent puzzlingly claimed to have a Social Security number eligible for work in the United States despite stating that they were “undocumented,” a likely contradiction.

145. The reported range was between \$5 per hour (per a reported daily wage of \$40) to over \$65 per hour (per a reported annual wage of \$125,000).

Table 2: Nanny Population vs. Our Sample (n=57)

	Nannies Generally	Our Sample
Female	98%	93%
White	69%	74%
U.S.-Born	75%	88%
U.S.-Born or Naturalized/Have SSN Eligible for Work	82% (U.S. Born or Naturalized)	98% (Have SSN Eligible for Work)
Associate Degree or Higher	45%	54%
Hourly Pay	\$12 to \$15 (adjusted to 2024 dollars)	\$29

Table 2 compares our sample to the aforementioned estimates of nanny population demographics. Our data essentially includes only nannies with Social Security numbers eligible for work. We did not adequately capture lower-paid, undocumented nannies whose primary language is not English.

In terms of bargaining power, about seventy percent of the respondents agreed or strongly agreed with the following statements: (1) “I am not scared of my hirer firing me because I can always find another job” and (2) “If something is bothering me about my pay, hours, or labor conditions, I can tell my hirer and we will work together to fix the problem.”

In regard to their knowledge about the independent contractor-employee distinction, about eighty percent of respondents correctly understood employee status as meaning (1) receipt of a tax form from their employer, and seventy-four percent identified employee status with (2) minimum wage and labor protections. A smaller majority of the respondents also understood employee status as reflecting (3) credit towards Medicare and Social Security benefits and (4) having taxes withheld by the employer. Eighty percent of respondents correctly understood independent contractors as having to pay their own taxes to be eligible for Social Security and Medicare benefits, and fifty-eight percent understood their lack of access to unemployment insurance.

The vast majority (75%) of respondents identified treatment as an employee in their most recent position *and* preferred treatment as an employee.¹⁴⁶ Over half of the employee-preferring respondents’ freeform explanations included the words “law,” “legal,” “liability,” or “tax” in their rationales. In contrast, only two employee-preferring respondents (and three total) used any of the terms “dignity,” “respect,” and “professionalism”—which are concepts commonly invoked in the legal literature on formal employment as well as during our

146. One Nannypalooza respondent interestingly expressed a preference for “family” status and reported being treated with “family status.”

expert interviews.¹⁴⁷ The legal rationales for employee classification were often emphatic—for example, some of the freeform responses included “ITS. THE. LAW!”; “It’s what’s legal!”; and “I am a domestic worker and by law need a w2.” Explicit tax-related responses included “Taxes are deducted”; “[D]on’t have to pay as much taxes at tax time”; and “Taxes withheld [and] split between [m]e and my bosses.”¹⁴⁸

Cash payment was avoided. About eighty percent of respondents indicated being paid by “Check or Direct Deposit/Venmo/Paypal,” as opposed to cash.¹⁴⁹ This largely corroborates stated preferences, as fifty-one of fifty-seven expressed “Check or Direct Deposit/Venmo/Paypal” as their payment preference (with the vast majority of these specifying a preference for taxes being withheld from the amount paid). Among those explaining their payment preferences, the majority again generated the words “law,” “legal,” “liability,” or “tax” in their rationales, echoing the employment-preference data.

Our respondents tied their affirmative preference to pay their taxes with claims to later benefits.¹⁵⁰ When asked about the tradeoff between current income and later benefits eligibility, fifty respondents (88%) said they would like to pay taxes to contribute to Social Security and Medicare so they could gain eligibility at a later age, while four were neutral about paying taxes. One respondent candidly explained: “Now that I have a greencard, I prefer to pay taxes. When I was undocumented, I preferred to be cash only and [pay] no

147. See, e.g., Dubal, *supra* note 103, at 71 (“White, nonmigrant taxi workers . . . longed for employee status, believing that the identity would not only bring security and stability but also *professionalism* and *dignity* back to their work” (emphasis added)); see also César F. Rosado Marzán, *Dignity Takings and Wage Theft*, 92 CHI.-KENT L. REV. 1203, 1204 (2017) (“[D]ignity takings [including wage theft] in the workplace call for stronger labor rights and work law that protects worker organization.”).

148. Confusion about whether more or less taxes would be owed as an employee versus an independent contractor was expressed in some of the Reddit posts. For example, one stated:

I’ve been working for a family since July, and they’ve been paying me with homepay (through care.com) and I’ve found it to be pretty easy and straightforward. Around November we started a nanny share, and the other family paid with homepay as well. They’ve run into issues along the way . . . [so] the parents of the second family asked if there was another payment method we could use. We decided Zelle would work . . . I guess I figured it was going to be the same type of deal where they withheld some of my payment for the taxes, but they just told me that they wouldn’t be withholding anything/“increasing” my pay for taxes. Basically I’m just really confused?? This is the first family I even did taxes with, all my other sitting/short term nanny jobs were just paid under the table. . . . Can anyone tell me how it works to do the taxes all on your own? Do you end up paying more in the long run?

See *_xxcookiesncreamxx_*, REDDIT (Feb. 12, 2021, 3:53 PM), https://www.reddit.com/r/Nanny/comments/lilrot/tax_help_employer_wants_to_change_payment_method (on file with the *Iowa Law Review*).

149. A few respondents chose the “something else” option for their form of payment and then specified “payroll,” indicating that their employer used a payroll service.

150. Some in-home childcare providers—namely newborn care specialists—may work multiple short-term arrangements to strategically secure benefits. NCSA *Scope of Practice for Newborn Care Specialists*, NCSA, <https://newborncarespecialist.org/scope-of-practice> [<https://perma.cc/3EV M-C9TR>] (“Newborn Care Specialists work with families in the first [sixteen] weeks after birth (adjusted for prematurity), providing them with direct newborn care.”).

taxes.” This underscores the pivotal role that immigration status plays in worker classification preferences.

In sum, our empirical strategy generated a sample of English-speaking, documented, highly-paid nannies. We believe we largely capture a middle-to-high wage subgroup of workers, above the lower-paid, nonwhite, undocumented workers but also below the small group of more elite nannies who attend even more expensive conferences.¹⁵¹ Our respondents prefer and experience formal employment and payment and also used strong language concerning law and taxation to explain their preferences.

B. REDDIT ANALYSIS

In this Section, we use an online discussion forum (Reddit) to better understand nannies’ tax preferences, reasons for those preferences, bargaining experiences, and tax-related challenges.¹⁵² Reddit, known as “the front page of the Internet,” is a website to which users can post questions or comments (a “post”) or react to the posts or comments of others (a “comment”).¹⁵³ According to a February 2021 Pew research survey, eighteen percent of internet users use Reddit.¹⁵⁴ The general public can view Reddit discussions without an account; to post or comment, however, users must create an account by registering a username. There is also a voting system within Reddit: Users can vote submitted posts or comments up or down (“upvote” or “downvote”). Reddit is divided into topic-based sub-communities called “sub-reddits.”¹⁵⁵ As discussed below, we focused our attention on the “nanny” subreddit.¹⁵⁶

1. Advantages and Limitations of Online Discussion Forum Data

Using Reddit to understand the tax preferences facing a sub-population of taxpayers like nannies offers advantages, “particularly where other sources of data may not be immediately available.”¹⁵⁷ Shu-Yi Oei and Diane Ring

151. Nannypalooza’s \$295 early bird registration fee is approximately half the early bird registration fee for a competing, more exclusive conference hosted by the International Nanny Association (“INA”). See 2024 *Events Pricing and Deadlines*, INT’L NANNY ASS’N (Sept. 10, 2023), <https://nanny.org/2024-events-pricing-and-deadlines> [<https://perma.cc/B337-SPA5>].

152. Our approach was inspired by Shu-Yi Oei and Diane Ring in a prior contribution. See Oei & Ring, *supra* note 79, at 82.

153. See Alexey N. Medvedev, Renaud Lambiotte & Jean-Charles Delvenne, *The Anatomy of Reddit: An Overview of Academic Research*, in DYNAMICS ON AND OF COMPLEX NETWORKS III 183, 185 (Fakhteh Ghanbarnejad, Rishiraj Saha Roy, Fariba Karimi, Jean-Charles Delvenne & Bivas Mitra eds., 2021) (providing an overview and schematic structure of the Reddit platform); see also *How and Why Is Reddit Known as the Front Page of the Internet?*, QUORA, <https://www.quora.com/How-and-why-is-Reddit-known-as-the-front-page-of-the-internet> [<https://perma.cc/2E8E-F9GN>].

154. BROOKE AUXIER & MONICA ANDERSON, PEW RSCH. CTR., SOCIAL MEDIA USE IN 2021, at 4 (2021).

155. Medvedev et al., *supra* note 153, at 185 (describing these subreddits as “self-created communities of users, united by a certain topic”) (emphasis omitted).

156. We chose Reddit over other social media forums/communities (e.g., Facebook, TikTok) because of its longstanding reputation of being a place where people go to get their questions answered in long form.

157. Oei & Ring, *supra* note 80, at 65–70.

identify multiple reasons to use online discussion forums as data sources for rideshare drivers,¹⁵⁸ many of which also apply to nannies. First, both rideshare drivers and nannies face isolation and may find internet discussion forums particularly useful places to ask questions and share information.¹⁵⁹ Second, studying online forums “allows a real-time examination” of the user’s concerns, unlike “surveys and interviews, which rely on [the user’s] recollections of past events.”¹⁶⁰ Third, online forums are “relative[ly] anonym[ous]”¹⁶¹ and, as compared to in-person or nonanonymous forums, may foster more candid observations.

Using online discussion forums to study the tax preferences and challenges of nannies also has significant limitations. First, as compared to a population like rideshare drivers, nannies may be less tethered to the internet and, therefore, less likely to seek out online discussions relating to taxes. Those who do may thus be unrepresentative of the larger population of nannies.¹⁶² Second, nannies who seek out Reddit for advice are typically those encountering difficulty. Therefore, the extent to which they report certain things, such as conflicts with parent-hirers, may be greater than a random sample of nannies.¹⁶³ Third, nannies’ stated preferences—even under internet anonymity—may not match up with their real tax preferences. One can easily imagine why a nanny would hesitate to take a position online that diverges from what she knows the law to be. The result may be an overrepresentation of stated preferences for employee classification.

Our methodology also has limitations: The subset of posts on which we have focused might not be representative of all tax-related discussions. In addition, one might disagree with how we’ve coded the preferences expressed by the nannies’ posts. Despite these limitations, we hope that—alongside the insights of the small-scale survey and the expert interviews and in the absence

158. *Id.* at 67 (“[T]hick description of online interactions can add nuance and texture to our understanding of the research subject that other methodologies—such as quantitative data analysis—may fail to capture.”).

159. The relative isolation of nannies was one of the themes that arose in our expert interviews. See Zoom Interview with Alejandra Cuestas-Jaimes, Legal Dir., Workers Rts., La Raza Centro Legal (Aug. 23, 2023); Zoom Interview with Victor Narro, Dir., Univ. of Cal. L.A. Lab. Ctr. (Aug. 29, 2023); Zoom Interview with Sue Downey, Founder, Nannypalooza (Sept. 29, 2023).

160. Oei & Ring, *supra* note 80, at 67.

161. *Id.*

162. Indeed, some of the demographics of Reddit users diverge significantly from those of nannies: Men are twice as likely to be Reddit users (23%) as women (12%), yet nannies are overwhelmingly women. See Kaiping Chen & David Tomblin, *Using Data from Reddit, Public Deliberation, and Surveys to Measure Public Opinion About Autonomous Vehicles*, 85 PUB. OP. Q. 289, 304 (2021) (“[E]xisting research shows that Reddit users are more likely to be white young males, with some college education, than the general public.”); see also AUXIER & ANDERSON, *supra* note 154, at 3. Reddit users also skew younger; we don’t have age demographics on nannies but to the extent that nannies also skew young, this may lean in favor of representativeness. Chen & Tomblin, *supra*, at 304.

163. Our nonrepresentative survey responses, as well as some expert interview comments, suggest that at least some nannies do not have regular conflicts with hirers over pay format or tax withholding.

of large-sample direct survey data—content analysis of this nanny online discussion forum can reveal useful insights.

2. Reddit Analysis and Coding

We searched for tax-related postings in the “r/nanny” subreddit, which is primarily geared towards and used by nannies.¹⁶⁴ Specifically, we focused on posts that included the term “tax.” Using a combination of a Python script and hand-gathering, we generated a total of 320 posts.¹⁶⁵ The Python script scraped the following data from Reddit into an Excel spreadsheet, which was augmented by the hand-gathered posts: (1) title of the post, (2) body text of the post, (3) number of comments on the post, (4) number of “upvotes” received by the post, (5) URL of the post/thread, (6) username of originator of the post, and (7) for most of the posts, the date and time of the post.

Two of the authors independently read each of the 320 posts and made two screening determinations. First, if the nanny was asking about a foreign-tax jurisdiction (such as Canada or the United Kingdom), we excluded the post. This led us to drop four posts. Second, if the post was not written from the point of view of a nanny (i.e., if it asked a question on someone else’s behalf or was written from the point of view of a parent-hirer), we similarly excluded it. This caused us to drop sixty-eight posts. For the 248 remaining posts, we coded each with one of the following hashtags:

- #employee (if the nanny expressed a preference to be treated as an employee)
- #IC (if the nanny expressed a preference to be treated as something other than an employee, IC was assigned whether the nanny indicated she wanted to be paid “under the table” or was planning to report her nanny income as income from self-employment)
- #ambivalent (if the nanny expressed ambivalence as to her classification)
- #seekinginfo (if the nanny was asking a question about implications of classification or other tax-related information)
- #anothertopic (if not discussing the tax implications of worker classification)

Of these 248 posts, 154 (about 62%) expressed a preference regarding worker classification and were assigned one of the first three hashtags listed above. The remaining ninety-four posts were coded as “#anothertopic” (twenty-

164. We also investigated searching for “nanny” in the “taxes” subreddit (r/taxes). This yielded many posts, but upon reading them, the user was frequently the hirer rather than the nanny. Because of our project’s goals, see *supra* notes 24–25 and accompanying text, we focused on the r/nanny subreddit, specifically posts discussing taxes.

165. We ran a Python script that captured posts within the “nanny” subreddit (r/nanny) that mentioned the word tax. It generated a dataset of all the posts mentioning tax that were posted in the subreddit, but only if the post had a username associated with it. However, some posts have [deleted] usernames associated with them. For those posts, we copied the posts and other relevant data by hand. Due to technological limitations, we were unable to scrape the comments to the posts. Therefore, if the only mention of the search term was in a comment to a post, the thread-originating post would not be included in our dataset.

eight posts) or “#seekinginfo” (sixty-six posts). In what follows, we focus on the 154 posts that expressed, in some fashion, a worker classification preference.

We then coded the reasons that were expressed for the worker classification preference using the following hashtags:

- #complywithlaw (expressing a desire to comply with the law; posts stating “I want to do what’s legal” and “because it’s the law” were classified with this hashtag)
- #needdocumentation (needing documented employment income to rent an apartment or purchase a home or car)
- #futurebenefits (expressing a preference to be eligible for future social safety net benefits such as unemployment insurance, disability insurance, or Social Security)
- #betterthanself-reporting (expressing that filing as an employee was easier than filing as a self-employed independent contractor)
- #morecash (expressing a desire to receive more cash up front in lieu of paying taxes)

Finally, to flag instances in which reference was made to the bargaining process, we assigned a #conflict hashtag to the post if it expressed that there had been conflict between the nanny and the parent-hirer about taxes or worker classification or if the nanny expressed fear that there would be future conflict.

For all of these coding decisions, once both of the coding authors reviewed all the posts, we compared our coding. Where our assigned codes differed, we discussed the post and arrived at a consensus coding.

3. Results

i. Classification Preferences Expressed

Strikingly, the overwhelming majority of the 154 posts that expressed a worker-classification preference preferred classification as an employee (124 posts, or about 81%). Only eight posts expressed a preference for classification as an independent contractor (5%), and twenty-two expressed ambivalence about classification (14%).¹⁶⁶

The following table shows the average and median number of comments and upvotes each of the expressed preferences received.

166. See also Eleanor Wilking, *Independent Contractors in Law and in Fact: Evidence from U.S. Tax Returns*, 117 NW. U. L. REV. 731, 738 (2022) (using digitized U.S. income tax filings and measures of firms’ control over workers to argue that “the average employee and the average contractor were indistinguishable on most of the measures of control”).

Table 3: Preferences Expressed

Preference	Comments		Upvotes	
	Average	Median	Average	Median
#employee (n=124)	17	9	16	5
#IC (n=8)	19	11	13	5
#ambivalent (n=22)	12	8.5	7	3.5

The most comments (highest average and median) went to the posts that expressed #IC as a preference; however, the number of upvotes garnered for #employee (highest average) was the largest. Those who were ambivalent about classification were least resonant with other Reddit users: They garnered the fewest comments and upvotes.

ii. Reasons for Preferences

For each of the categories of expressed preferences (#employee, #IC, and #ambivalent), many of the posts offered clues as to the reasons for the nanny's preference.

a. Reasons for Preferring #employee

Of the 124 posts that expressed a preference to be classified as an employee, most (113, or 91%) offered a reason for that preference. The following table summarizes the comments and upvotes generated by each of the reasons.

Table 4: Reasons for Preferring Employee Treatment

Reason	Comments		Upvotes	
	Average	Median	Average	Median
#complywithlaw (n=101)	18	9	16	5
#neeeddocumentation (n=8)	14	4.5	35	5
#futurebenefits (n=2)	10	10	5.5	5.5
#betterthanself-reporting (n=2)	11.5	11.5	3.5	3.5

Eighty-nine percent of the posts that offered a reason for the #employee classification preference indicated an interest in wanting to comply with the law (101 posts out of 113 that offered reasons). Other reasons were scarce by comparison. With respect to the comments generated by each reason, the #complywithlaw reason also had the highest average and median comments. With respect to upvotes, #complywithlaw had the second-highest average number of upvotes, behind #neeeddocumentation (median numbers of upvotes

were fairly similar across the reasons categories).¹⁶⁷ The following discussion reproduces popular reasons nannies offered for their preferences; a discussion of the themes that each of the posts highlight follows.

#complywithlaw: The need or desire to comply with the law was the most frequently expressed reason for preferring employee classification. Typically, this manifested as a simple statement that the law requires treatment as an employee. The following is an example of a popular post in this vein (receiving 132 comments and an astounding 232 upvotes):

I'm currently job searching [and] was talking to a mom and told her my rate ([twenty-five dollars] in [high cost of living] area . . .) and she was down . . . and then I asked her about a contract and being paid over the table, and she got really cold and goes, 'well I don't know if we can afford to pay you [twenty-five dollars] and pay your taxes.' Which just irked me because they're not paying taxes for me, they're responsible for taxes as an employer. I don't know why they act like we're conning them or something by asking them to follow federal regulations!¹⁶⁸

Theme. In addition to concerns over legal compliance, this post and others illustrate what appears to be a norm or expectation in the nanny industry: Wages are bargained over as “take-home” or after-tax (net) amounts rather than pre-tax (gross) amounts.¹⁶⁹ This implies something potentially unique about the nanny industry. Whereas in most sectors of the economy, wages and salaries are advertised and negotiated as pre-tax amounts, the posting nanny expects that her preferred hourly wage will be what she receives after *both* the employer's share and the employee's share of taxes have been paid by the parent-hirer.¹⁷⁰ Put differently, the posting nanny presumes that the economic incidence of the applicable payroll taxes lines up with their legal incidence

167. This is because one of the #neeeddocumentation posts got a huge number of upvotes, as discussed below.

168. theendofthefingworld, *What Is Up with Parents and Taxes*, REDDIT (Sept. 9, 2022, 4:38 PM), https://www.reddit.com/r/Nanny/comments/xa5vxm/what_is_up_with_parents_and_taxes (on file with the *Iowa Law Review*).

169. A different post touched on this norm as well. It read:

I see a lot of nannies in my area say their rate is \$17-20 but then when asked about taking taxes out they want it grossed-up so they are actually bringing home that amount. . . . Now my rate is \$20/hr but after taxes it comes to \$16.75 which is less than I was making at my last position. I would never have thought to ask an employer to make my rate several dollars higher to account for taxes so I can take home the same . . .but [sic] should I? . . . I'm wondering if I should have just asked for \$22-24 per hour [in] the first place so I'd be bringing home what I consider my actual rate.

imananny, *Legal Pay Rate Question!*, REDDIT (Nov. 20, 2017, 11:36 AM), https://www.reddit.com/r/Nanny/comments/7ea33b/legal_pay_rate_question (on file with the *Iowa Law Review*) (having twenty comments and three upvotes).

170. Note that the practice of being “grossed-up”—where an employer compensates a worker for income taxes withheld from the worker's pay—is problematic because, if done in cash “off the books,” it constitutes illegal tax evasion (the extra cash paid to reimburse workers for taxes is itself additional income on which taxes must be paid).

(i.e., because the employer is legally obligated to remit both the employer's and the employee's shares of the payroll taxes owing, there will be no economic cost borne by the employee in the form of a reduced take-home wage).¹⁷¹

The unstated reasons for the nanny's presumption may be connected to the pervasiveness of informality in the nanny sector, in which there is no distinction between pre- and post-tax wages. To the extent that there has been growing awareness of the importance of nanny formality over the past several decades (as suggested by some of our subject matter experts)¹⁷² and more nannies, like this one, are bargaining for formal employee classification, this distinction understandably becomes a point of contention. The parent-hirer thus balks at the prospect of grossing-up the nanny for the taxes that would otherwise be withheld, and the nanny takes umbrage at not getting what she understands to be her required pay. Indeed, the nanny may infer a level of disrespect from the reluctance of the parent-hirer to bear the full tax cost. The nanny may make the inference that she is different from, and possibly less valuable than, other employees (i.e., those of a business, not in a private home) who would be paid legally by default, although typically not with any kind of grossing-up.

Another very popular post (receiving 111 comments and 165 upvotes) that was coded as a #complywithlaw reason for wanting employee classification reads as follows:

I know I'm in the right, but I'm a little shaken from the argument that just happened between DB ["Dad Boss"]¹⁷³ and I. . . I brought up to DB that I am owed a W-2 in December. He disagreed and stated he wanted to look more into it, which means he sat there and googled about it for [fifteen] minutes before I told him I'm going home for the night . . . I called my uncle who is a CPA, and he is on my side. This morning I arrive, and . . . I asked if he has any updates on . . . the taxes. This spurred a very confusing conversation in which he talked very fast at me and in a bunch of circles about the 1099 and how I actually benefit from it? He mentioned write offs, deductibles, self employment taxes, etc. and how I "didn't make \$12,000 last year" (I did, actually) so that benefits me . . . He conveniently forgot to mention that I will be sat with his half of taxes. He then goes on to state that his tax guy used to audit for the IRS and that he said it's hard to define what an employee is because

171. Of course, the economic incidence of such taxes may differ from their legal incidence. See *supra* note 84 and accompanying text (discussing tax incidence); Fullerton & Metcalf, *supra* note 84, at 1821–22 (discussing the incidence of payroll taxes).

172. See, e.g., Zoom Interview with Sue Downey, *supra* note 159.

173. DB is one of a series of abbreviations used in Reddit posts. See HarryPotterGeek, Comment to *What Does All These Abbreviations Mean?*, REDDIT (May 7, 2017, 11:40 AM), https://www.reddit.com/r/Nanny/comments/6grw6u/what_does_all_these_abbreviations_mean (on file with the *Iowa Law Review*).

there's "so many things to take into consideration." And that he said that he can't give me a W-2 because he's not a business.¹⁷⁴

This post was coded as #complywithlaw because of the statements "I am owed a W-2" and "I know I'm in the right."

Themes. This post reflects three themes. First, it sheds light on the role of tax professionals in nannies' tax lives. Here, there were two tax professionals: the nanny's uncle, a CPA who was giving the nanny accurate tax information, and the parent-hirer's "tax guy," who, as it is described, complexifies the common-law worker classification test to justify the parent-hirer's use of a Form 1099.¹⁷⁵ Second, the salience of the parent-hirer paying half of payroll taxes when the nanny is classified as an employee appears to be high ("He conveniently forgot to mention that I will be sat with his half of taxes.")¹⁷⁶ This post resonates with one of the freeform responses in the survey sample, which stated "don't have to pay as much taxes at tax time" as a reason to prefer employee over independent contractor classification.¹⁷⁷ Third, this post indicates significant conflict, with the parent-hirer pressuring the nanny to accept classification as an independent contractor. The nanny did not concede and mentioned having a CPA uncle, which may have helped her feel more confident in demanding employee classification.

Indeed, the theme of conflict or fear of conflict arose frequently among the 101 posts that expressed a preference to be classified as an employee and cited compliance with the law as the reason. We coded seventy-four of these (73%) as expressing some element of conflict.¹⁷⁸

174. fireflytea, *DB Won't Budge on 1099*, REDDIT (Jan. 5, 2022, 6:05 AM), https://www.reddit.com/r/Nanny/comments/rwleu1/db_wont_budge_on_1099 (on file with the *Iowa Law Review*).

175. See discussion *infra* Section II.C.1 (discussing experts' views of the role of accountants in misreporting nanny income).

176. Saving the employer's half of employment taxes might be so salient to this nanny that it could be thought of as an independent reason for preferring employee classification; however, we didn't see this mentioned a second time, so we didn't create a code for it.

177. See *supra* note 148 and accompanying text.

178. As a representative example, this post describes a nanny's trepidation about bringing up classification as an employee (having nine comments and four upvotes):

I got a new Nanny position in October and started just getting paid without the taxes being taken out. The Contract we signed says, 'The Employers will pay the Employee a salary of \$450 weekly on Fridays. Taxes will not be withheld from your paycheck and you are expected to submit the appropriate income taxes to the IRS[.]' I didn't think much of it because the family has had previous Nannies and I assumed they'd be reporting it to the IRS because clearly they knew I would be. Well I finally got around to start researching and it seems like at best this isn't a good route for me and at worst it's illegal. The family is very educated and have had nannies for longer than I've been a nanny so I'm worried if I bring this up they might just disagree with what I've been finding on the internet and I don't have much authority as a less experienced young nanny to argue with them ("I know you are both well educated and have over [eight] years of nanny experience, but I saw this video on youtube.... [sic]")[.] How do I bring this up?

See nannyguy, *New Family Doesn't Take Taxes Out of My Paychecks and Expects Me to Report Them to the IRS; Need Advice*, REDDIT (Dec. 11, 2015, 10:16 AM), https://www.reddit.com/r/Nanny/comments/3w3tb/new_family_doesnt_take_taxes_out_of_my_paychecks (on file with the *Iowa Law Review*). This

#neeeddocumentation: Needing income documentation to rent an apartment or buy a car or a home was the (distant) second-most frequent reason cited for wanting employee classification (n=8). However, one of these posts got the largest number of upvotes (246) in this category along with fifty-six comments. It is long but worth reading:

i was paid under the table for a LONG time. i was young when i started, and i sure didn't think i would be here for this long. i had another job on the books, so i didn't really care about pocketing this money and having it tax free. then, i left my other job and i started reporting my (cash) income from NF [nanny family] - which naturally, was \$\$\$\$\$\$\$\$\$\$. . . each year i would pay anywhere from \$4500-6k in taxes. for reference, MB ["Mom Boss"] makes about 1.5mil, DB ["Dad Boss"] makes about 500k (i know this as fact, because they talk about it). mid 2020, we finally got me on the books after asking for a long time. it was a nightmare to discuss . . . [T]hey wanted me to only report [fifty percent] on the books and the rest in cash, which i was NOT open to since i intend to have a steady reported income so i can buy a home one day AND because i think it's just an insulting ask. they wouldn't allow their corporate jobs to pay them 50/50, why should i? i also expressed to them that had i been on the books from the beginning, i would have negotiated a much higher "salary", but since that was not the case i would like a bump to ensure that my take home pay would be the same. so we finally all agreed to report my pay to the payroll service, and they would reimburse the missing amount. for reference, i take home \$1000/wk, the payroll reduced me to \$806, so they handed me \$194 in cash to make up the difference. their biggest gripe about putting me on the books was the amount of tax THEY would have to pay. . . . [T]his morning, MB looked at me and said with disgust, "we just paid the rest of the taxes for 2021 to home pay and it was \$5000. that means we paid \$15,000[.]" . . . HOW can you be SO tone deaf, to complain about having to pay ANY taxes on my payroll when i have had to pay an average of 5k A YEAR for SIX YEARS?! NEARLY 30K. i cannot even afford to live ON MY OWN on my salary, while you make MILLIONS a year. . . . [T]he ignorance. the tone deafness. the audacity. i have no other words.¹⁷⁹

We classified this as *#neeeddocumentation* because of the statement that "i intend to have a steady reported income so i can buy a home one day."

Themes. Several important themes are apparent. Again, the norm or expectation that nannies' wages will be quoted as net "after-tax" amounts is on display and highlights the (illegal) practice of grossing-up the nanny in unreported cash for her tax costs to get her to her agreed-upon hourly or

post illustrates a lack of perceived bargaining power among nannies, reflecting questions also asked in our survey.

179. feedmechickentendies, *I Am SEETHING*, REDDIT (Jan. 19, 2022, 9:30 AM), https://www.reddit.com/r/Nanny/comments/s7rcig/i_am_seething (on file with the *Iowa Law Review*).

weekly wage (“i take home \$1000/wk, the payroll reduced me to \$806, so they handed me \$194 in cash to make up the difference”). Second, it discusses being “off the books” as something common for younger nannies, which can result in subsequent conflict when an aging nanny seeks to get paid on the books. Third, it describes parent-hirers who put only a portion of the nanny’s earnings on the books. The nanny in this post recoils from that suggestion, but this practice of parent-hirers was discussed in some of the expert interviews, sometimes for the purpose of helping the nanny avoid benefit cliffs.¹⁸⁰

b. Reasons for Preferring #IC

Table 5: Reasons for Preferring Independent Contractor Treatment

Reason	Comments		Upvotes	
	Average	Median	Average	Median
#morecash (n=5)	19	12	7.8	4

Eight posts expressed a preference for something other than formal employee classification, including informal work. The majority (five) of the posts expressed a desire for #morecash. No reason was expressed for the remaining three posts. The most popular post among the five that cited #morecash as the reason for preferring informality (thus de facto nonemployee status) received fifty comments and twenty-two upvotes:

When I got the job I was very sure it was under the table nothing was ever said about it not being that. Well today I was giving the NK [“Nanny Kid”] lunch when the DB [“Dad Boss”] started telling me he will be counting this on his taxes and I will be getting a tax form . . . for when I owe taxes. I feel like kinda hurt bc that was never apart of the plan. Also I only get paid \$13.75 an hour and they don’t pay me when they cancel or on holidays . . . They seem to care about me and everything, so I am confused and have no idea how to feel. Is the way I am feeling valid? Am I over reacting?¹⁸¹

We coded this post as offering the reason #morecash for preferring to be classified as a nonemployee (paid under the table) because the nanny says she makes only \$13.75 an hour and isn’t paid for lost workdays. The nanny appears to imply that she needs the extra cash from not paying taxes.

Theme. The theme highlighted here is the practice of “1099-ing” (misclassifying) the nanny and giving her a Form 1099 regardless of any understanding that the nanny would be paid off the books.¹⁸² This may occur after a parent-hirer and nanny have agreed that the pay will not be reported,

180. See Zoom Interview with Alejandra Cuestas-Jaimes, *supra* note 159; see also Zoom Interview with Natalie Renew, Exec. Dir., Home Grown (Sept. 12, 2023).

181. See AdventurousBat7633, *Advice Needed*, REDDIT (July 13, 2023, 1:34 PM), https://www.reddit.com/r/Nanny/comments/14yu5tg/advice_needed (on file with the *Iowa Law Review*).

182. See Zoom Interview with Marcia Hall, *supra* note 61.

but the parent-hirer subsequently decides to report all or some of their childcare expenses (perhaps to claim the Child and Dependent Care Tax Credit¹⁸³). Rather than treating the nanny as an employee and following the norm of grossing the nanny up for the taxes that are withheld from the nanny's pay, the parent-hirer seeks to treat the nanny as an independent contractor and provides her with a Form 1099. This allows the parent-hirer to collect the tax credit but, in misclassifying the nanny, requires the nanny to file as an independent contractor and pay the entirety of self-employment and income taxes on the Form 1099 amount. This post expresses the surprise that the nanny felt when the parent-hirer unilaterally announced that they would be giving a Form 1099—it appears that her expectation had been that she wasn't going to pay taxes at all!

c. Reasons for Being #ambivalent

Only five of the twenty-two posts that expressed ambivalence about classification contained an indication of the reason for the ambivalence. For three of the five, #complywithlaw was the reason. For two, #needdocumentation was the reason. These reasons highlight themes that were already mentioned so we omit further discussion of them.

Table 6: Reasons for Ambivalence About Classification

Reason	Comments		Upvotes	
	Average	Median	Average	Median
#complywithlaw (n=3)	5.7	7	9	8

4. Observations and Summary

Our review of nannies' Reddit posts mentioning "tax" had three main findings. First, an overwhelming majority—eighty-one percent—of the posts in which a preference regarding worker classification was expressed indicated that employee classification was preferred. Only a small minority (5%) expressed a preference for something else, either informality or independent contractor classification. The remaining posts expressed ambivalence about classification and tax reporting. Second, for those posts that expressed a reason for wanting to be classified as an employee, eighty-nine percent implied that compliance with the law was the motivating reason. This second finding speaks, perhaps, to the constitutive nature of the tax law—that society reflects the law as much as law reflects society, and individuals' preferences and behaviors are profoundly shaped by what the law is.¹⁸⁴ Third, unsurprisingly

183. 26 U.S.C. § 21 (authorizing the credit).

184. Some might argue that this resonates with the Hartian view that "obligations operate as standards and as reasons for action. . . . [O]bligation-imposing legal rules specify, in some genuinely

(given that the nannies posting on Reddit were seeking support from the online subreddit community), conflict was a frequently-expressed feature of discussions between nannies and parent-hirers about worker classification.

In addition to these main findings, several core themes emerged from the substantive Reddit posts. First, they underscored that nannies' wages are typically quoted on a "take-home" or "after-tax" (net) basis in which nannies expect to be "grossed-up" for taxes that are withheld by parent-hirers who treat them as employees. Second, tax professionals/accountants appear to play a role in the misclassification of nannies. Third, the posts revealed a set of unlawful practices, including:

- The parent-hirer giving a nanny, who would likely be properly classified as an employee, a Form 1099, sometimes by surprise after agreeing that wages would be paid under the table ("1099-ing" the nanny).
- The nanny and parent-hirer agreeing to report only some of the nanny income on the books, leaving the rest unreported.
- The parent-hirer using unreported cash to "gross-up" a nanny for taxes that were withheld from her pay.

C. EXPERT INTERVIEWS

To better understand likely gaps and biases in our research, we interviewed fifteen subject matter experts. We spoke with representatives from nanny membership groups, workers' rights organizations, legal service agencies, research centers, policy advocacy organizations, domestic work payroll service providers, and one state legislator.¹⁸⁵ Most of the interviewees—aside from

though not straightforwardly moral sense, what *ought* to be done." See NICOLA LACEY, *A LIFE OF H.L.A. HART: THE NIGHTMARE AND THE NOBLE DREAM* 192 (2006).

185. Nanny membership groups include International Nanny Association and Nannypalooza. Workers' rights organizations include the National Domestic Worker Association and UCLA Labor Center. Legal service agencies include La Raza, Greater Boston Legal Services, and Bet Tzedek Legal Services. Research and policy advocacy organizations include Home Grown, Berkeley's Center for the Study of Child Care Employment, Early Edge California, and the UCLA Labor Center. Nanny payroll services include HomeWork Solutions and Care.com's HomePay. Finally, one interviewee is a state legislator, and another is the founder of a nanny agency in the Washington, D.C. area.

Although two of our interviewees worked as nannies, either currently or formerly, we are not reporting here about their personal experiences as nannies. Interviews were limited to gathering high-level perspectives about industry challenges and policy reforms.

International Nanny Association is an umbrella organization that aims to "bring together professionals in the industry from around the globe to set high standards, increase awareness, to develop professional skills, and to educate families about the benefits of hiring a qualified nanny or newborn care specialist to care for their children." *About the INA*, INT'L NANNY ASS'N, <https://nanny.org/about-ina> [<https://perma.cc/U534-DFZV>].

Early Edge California "work[s] to advance policy changes and investments that will expand high-quality Early Learning programs for children from birth to age [eight]." *About Us*, EARLY EDGE CAL., <https://earlyedgecalifornia.org/about-us> (on file with the *Iowa Law Review*).

Home Grown is "[a] national collaborative of funders committed to improving the quality of and access to home-based child care." *About Us*, HOME GROWN, <https://homegrownchildcare.org/about-us> [<https://perma.cc/RCL4-MFAM>].

payroll service providers and two attorneys—do not have tax law expertise. All interviews except one took place on Zoom, and most of them lasted one hour. In the interviews, we asked experts for their perspectives based on their work researching, representing, advocating for, and organizing nannies. We also asked about policy reforms to improve nannies' financial security and workplace economic conditions.

These interviews revealed a diversity of experiences and perspectives among nannies. Many nannies prefer formal employment and tax reporting, as our survey and the Reddit survey revealed. Experts also shared that many nannies prefer informality, a less common preference among our survey respondents and the Reddit posters. Those who prefer informality, experts explained, may be undocumented, cash-strapped, or reliant on means-tested public benefits. They are thus a particularly vulnerable, hard-to-reach segment of the domestic workforce. Experts also described common payment arrangements that fell somewhere between strictly formal and informal work. These arrangements call into question any simple understanding of formality or informality in the nanny sector.

1. Preferences and Conflict

Nannies are not a monolith. They come from diverse backgrounds and have diverse preferences when it comes to income and tax reporting. In many cases, nannies may simply not think much about taxes: Both interviewees from domestic worker advocacy organizations said that workers rarely bring up taxes or tax issues as a concern.¹⁸⁶ According to Haeyoung Yoon, Senior Policy Director at NDWA, “Taxes just don’t come up in conversations with workers. They want higher wages, better work conditions.”¹⁸⁷ Others shared that certain workers may not be aware of basic tax terminology or general tax rules.¹⁸⁸ Alejandra Cuestas-Jaimes, Legal Director, Workers’ Rights Program, La Raza Centro Legal, described taxes as “an afterthought” for most undocumented workers—unless they need a history of tax payments to serve as proof of residence for immigration relief.¹⁸⁹

For other nannies, taxes may be front of mind. Nanny influencers on social media platforms such as TikTok and Instagram often mention taxes.¹⁹⁰ According to Marcia Hall, Executive Director and founder of the International

White House Nannies is a premier nanny placement agency in the Washington D.C. area. WHITE HOUSE NANNIES, INC., <https://www.whitehousenannies.com> [<https://perma.cc/E7SG-JDUP>].

186. Zoom Interview with Rocío Alejandra Ávila, *supra* note 124; Zoom Interview with Haeyoung Yoon, Senior Pol’y Dir., Nat’l Domestic Workers All. (Sept. 19, 2023).

187. Zoom Interview with Haeyoung Yoon, *supra* note 186. At another point in the interview, Haeyoung Yoon also said that her organization does not proactively raise the issue of taxes with workers. *Id.*

188. Zoom Interview with Tom Breedlove, *supra* note 61.

189. Zoom Interview with Alejandra Cuestas-Jaimes, *supra* note 159.

190. Zoom Interview with Sue Downey, *supra* note 159; *see, e.g.*, Stephanie Felzenberg (@stephaniefelzenberg), INSTAGRAM, <https://www.instagram.com/stephaniefelzenberg> (on file with the *Iowa Law Review*); Brooke Weglarz (@brookeweglarz), INSTAGRAM, <https://www.instagram.com/brookeweglarz> (on file with the *Iowa Law Review*).

Nanny Association, the professional members of the International Nanny Association often think about taxes but may not be aware of specific tax reporting requirements.¹⁹¹ Natalie Renew, Executive Director of the childcare policy advocacy organization Home Grown,¹⁹² explained that taxes are often highly salient for childcare providers who rely on means-tested public benefits like the Supplemental Nutrition Assistance Program (“SNAP”) or Section 8—which could be cut off or reduced if reported income exceeds a certain threshold.¹⁹³

This lack of awareness is mirrored by parent-hirers and even their tax advisors. Parent-hirers, especially the first time, often hire nannies unaware that they are becoming employers and that they will be responsible for paying taxes. As Senator Lydia Edwards, a Massachusetts state legislator with experience working on domestic workers’ rights issues, stated, “Employers don’t see themselves as employers.”¹⁹⁴ Kelsey Chapple, an attorney at Bet Tzedek Legal Services in Los Angeles, made a similar point about parent-hirers’ lack of awareness: “They treat [their nannies] like babysitters.”¹⁹⁵ Prevailing norms in the sector are partly to blame for this ignorance of responsibility. Four experts from both the public and private sectors described nanny work as a “cash industry.”¹⁹⁶ Workers and parent-hirers simply presume that jobs will be informal.

Making matters worse, two experts reported that hiring families often receive inaccurate advice from accountants—echoing a theme that arose in Reddit posts—as well as from internet sources and other nannies.¹⁹⁷ Sue Downey, a working nanny and founder of the Nannypalooza conference, reported regularly reading online forum posts in which nannies describe instances of employers giving them a Form 1099 based on advice from their accountants.¹⁹⁸ Marcia Hall explained that accountants often don’t understand the special rules associated with in-home work.¹⁹⁹ She also said that nannies typically prefer that parent-hirers use specialized domestic work payroll companies.²⁰⁰ In contrast to the incorrect advice reportedly offered by some accountants, we learned that the handful of payroll companies that focus on the domestic sector see their mission as providing workers with free tax advice and are a major source of tax education for the sector.²⁰¹

191. See Zoom Interview with Marcia Hall, *supra* note 61.

192. See Zoom Interview with Natalie Renew, *supra* note 180 (describing Home Grown’s work).

193. *Id.*

194. Zoom Interview with Lydia Edwards, State Sen., Mass. State Senate (Sept. 6, 2023).

195. Zoom Interview with Kelsey Chapple, Staff Att’y, Emp. Rts. Project, Bet Tzedek Legal Servs. (Oct. 17, 2023).

196. Zoom Interview with Victor Narro, *supra* note 159; Zoom Interview with Sen. Lydia Edwards, *supra* note 194; Zoom Interview with Kelsey Chapple, *supra* note 195; Zoom Interview with Sue Downey, *supra* note 159.

197. Zoom Interview with Marcia Hall, *supra* note 61; Zoom Interview with Sue Downey, *supra* note 159.

198. Zoom Interview with Sue Downey, *supra* note 159.

199. Zoom Interview with Marcia Hall, *supra* note 61.

200. *Id.*

201. *Id.*; Zoom Interview with Jay Schulze, President, HomeWork Sols. (Sept. 31, 2023).

i. Preferences for Formal Work

Experts shared diverse reasons that nannies may prefer to work on the books, including internal motivations like a desire to “do the right thing” as well as external incentives like tax benefits or a need to establish financial history.²⁰²

Experts with diverse professional experiences explained that career nannies often strongly prefer formal employment.²⁰³ Marcia Hall explained, “There’s a sense of pride that comes with doing things the right way.”²⁰⁴ Rocío Alejandra Ávila, Senior Employment Law Counsel and State Policy Director with the NDWA, further explained that certain nannies understand that working on the books “may help [encourage parent-hirers] to treat them with dignity.”²⁰⁵ Somewhat relatedly, Marcia Hall and Nirali Patel, an attorney at Greater Boston Legal Services, also suggested that certain nannies may simply want to “do the right thing.”²⁰⁶ This impulse applies to nannies regardless of immigration status. As Patel explained, some of her undocumented clients file taxes in part “because it gives them a sense that they’re contributing to society, and they want to do the right thing by contributing their income.”²⁰⁷

Many experts also noted that they have witnessed a growing awareness of the importance of nanny formality over the past several decades.²⁰⁸ They attributed this increased awareness in part to the work of advocacy organizations like the NDWA,²⁰⁹ the entry of domestic payroll companies into the marketplace (which serve as educators),²¹⁰ media attention going back to the Zoe Baird “Nannygate” scandal,²¹¹ and state-level policy changes like Domestic Workers Bills of Rights that have been enacted in ten states (and three cities) so far, including California, New York, Massachusetts, Pennsylvania,

202. Zoom Interview with Marcia Hall, *supra* note 61; Zoom Interview with Nirali Patel, Fellow, Greater Bos. Legal Servs. (Sept. 1, 2023); Zoom Interview with Tom Breedlove, *supra* note 61; Zoom Interview with Jay Schulze, *supra* note 201; Zoom Interview with Sue Downey, *supra* note 159.

203. Zoom Interview with Marcia Hall, *supra* note 61; Zoom Interview with Rocío Alejandra Ávila, *supra* note 124; Zoom Interview with Tom Breedlove, *supra* note 61.

204. Zoom Interview with Marcia Hall, *supra* note 61.

205. Zoom Interview with Rocío Alejandra Ávila, *supra* note 124.

206. Zoom Interview with Marcia Hall, *supra* note 61; Zoom Interview with Nirali Patel, *supra* note 202.

207. Zoom Interview with Nirali Patel, *supra* note 202.

208. Zoom Interview with Marcia Hall, *supra* note 61; Zoom Interview with Rocío Alejandra Ávila, *supra* note 124; Zoom Interview with Tom Breedlove, *supra* note 61; Zoom Interview with Sue Downey, *supra* note 159.

209. Zoom Interview with Rocío Alejandra Ávila, *supra* note 124.

210. Zoom Interview with Sue Downey, *supra* note 159.

211. Zoom Interview with Marcia Hall, *supra* note 61; see Elise Viebeck, *Want a High-Ranking Administration Job Someday? Avoid the Nanny Tax Issue Now.*, WASH. POST (Oct. 17, 2016, 1:29 PM), <https://www.washingtonpost.com/news/powerpost/wp/2016/10/17/want-a-high-ranking-administration-job-someday-avoid-the-nanny-tax-issue-now> (on file with the *Iowa Law Review*) (referencing Zoe Baird’s failed nomination by President Bill Clinton for U.S. Attorney General as a result of Baird’s hiring of two undocumented immigrants and failure to pay their required taxes).

and Virginia, among others.²¹² The COVID-19 layoff emergency during which many nannies sought to obtain unemployment benefits also raised awareness of the importance of formality.²¹³

Interviewees also shared certain external pressures that motivate nannies to comply with tax filing obligations. Undocumented workers in particular may comply in order to prove residency as well as good moral character, in hopes of an eventual opportunity for legalization.²¹⁴ Nirali Patel and Tom Breedlove, Senior Director of Business Development at Care.com’s HomePay, noted that some workers comply in order to obtain tax or Social Security benefits.²¹⁵ And three experts—including both representatives of payroll companies—explained that many workers begin reporting income to prove financial history to get a loan or rent an apartment.²¹⁶ Sue Downey explained, “Very few people get caught [for not reporting income]. It’s far more likely that people get denied apartments because they can’t prove income. That’s the wake-up call.”²¹⁷

Finally, some nannies prefer to work formally but as independent contractors rather than employees.²¹⁸ Kelsey Chapple of Bet Tzedek shared the story of a nanny who characterized her services as a small business because “she thought it gave her more flexibility and negotiating power.”²¹⁹

ii. Preferences for Informality

Experts gave three primary reasons why certain nannies might prefer informality: a need for more cash up front, immigration concerns, and fears about losing means-tested benefits. As Victor Narro, Project Director for the UCLA Labor Center, put it, “The more cash they can have on hand, the better they are able to send sufficient remittances to their families in their home countries.”²²⁰ Experts from across sectors agreed that an immediate need for income was a driving factor among those who preferred informal work.²²¹

Immigration status also plays a role. Undocumented workers may fear that reporting income to the IRS will identify them to immigration authorities

212. *Domestic Workers Bill of Rights*, *supra* note 127.

213. Zoom Interview with Sue Downey, *supra* note 159; Interview with Barbara Kline, Founder & President, White House Nannies, Inc., in Washington, D.C. (Oct. 7, 2023).

214. Zoom Interview with Alejandra Cuestas-Jaimes, *supra* note 159; Zoom Interview with Haeyoung Yoon, *supra* note 186.

215. Zoom Interview with Tom Breedlove, *supra* note 61; Zoom Interview with Nirali Patel, *supra* note 202.

216. Zoom Interview with Tom Breedlove, *supra* note 61; Zoom Interview with Sue Downey, *supra* note 159; Zoom Interview with Jay Schulze, *supra* note 201.

217. Zoom Interview with Sue Downey, *supra* note 159.

218. Zoom Interview with Kelsey Chapple, *supra* note 195.

219. *Id.*

220. Zoom Interview with Victor Narro, *supra* note 159.

221. Sue Downey and Marcia Hall, both of whom have worked as nannies, made the point that workers often simply “can’t get by” on post-tax wages. Zoom Interview with Marcia Hall, *supra* note 61; Zoom Interview with Sue Downey, *supra* note 159.

and put them at risk of deportation.²²² Undocumented workers are also not eligible for federal tax benefits, eliminating one incentive for formality.²²³

Finally, several experts mentioned that some workers may prefer informality or underreporting to maintain eligibility for means-tested benefits such as Medicaid or Section 8.²²⁴ Haeyoung Yoon described the “interplay between low wages, access to benefits, and not having access to employer-provided health insurance [as] a huge force that causes domestic workers and nannies not to report their [income]. [They] make [these] choices . . . because they don’t make enough and maybe could get on Medicaid.”²²⁵

Aside from these three primary reasons, three experts also made the point that younger nannies and temporary nannies may be more likely to work informally.²²⁶ There’s an overlap with immigration here as well, in terms of future eligibility for Social Security benefits. According to Victor Narro, “I told the workers, ‘You have to think in terms of your future.’ Some said, ‘I just want to make enough money to send back to my children in my country.’”²²⁷ Senator Lydia Edwards made a similar point.²²⁸

iii. Conflict with Parent-Hirers

Conflicts arise when a nanny’s preferences do not align with those of the parent-hirers. Some experts said nannies experienced pushback from parent-hirers when they requested to be paid a certain way, whether they requested formal or informal work.²²⁹

Three experts explained that both nannies and parent-hirers often fail to define the terms of the working relationship in detail at the outset.²³⁰ This lack of clarity creates problems for nannies down the road. Jay Schulze, President of HomeWork Solutions, Inc. (a domestic worker-focused payroll service), explained that while nannies and parent-hirers may discuss a pay rate, they often neglect to clarify whether the rate is pre-tax or after-tax—an issue confirmed in Reddit posts.²³¹ Sue Downey explained that some nannies may be reluctant to request formal work initially but hope to change their

222. Zoom Interview with Alejandra Cuestas-Jaimes, *supra* note 159; Zoom Interview with Tom Breedlove, *supra* note 61.

223. Zoom Interview with Nirali Patel, *supra* note 202.

224. Zoom Interview with Kelly Reynolds, Senior Pol’y Analyst, Early Edge Cal. (Sept. 5, 2023); Zoom Interview with Haeyoung Yoon, *supra* note 186.

225. Zoom Interview with Haeyoung Yoon, *supra* note 186.

226. Zoom Interview with Marcia Hall, *supra* note 61; Zoom Interview with Victor Narro, *supra* note 159; Zoom Interview with Tom Breedlove, *supra* note 61.

227. Zoom Interview with Victor Narro, *supra* note 159; *see also* feedmechickentendies, *supra* note 179.

228. Zoom Interview with Sen. Lydia Edwards, *supra* note 194.

229. Zoom Interview with Natalie Renew, *supra* note 180; Zoom Interview with Rocío Alejandra Ávila, *supra* note 124; Zoom Interview with Sue Downey, *supra* note 159; Zoom Interview with Nirali Patel, *supra* note 202; Zoom Interview with Victor Narro, *supra* note 159.

230. Zoom Interview with Rocío Alejandra Ávila, *supra* note 124; Zoom Interview with Jay Schulze, *supra* note 201; Zoom Interview with Sue Downey, *supra* note 159.

231. Zoom Interview with Jay Schulze, *supra* note 201.

work status after establishing a relationship with the family.²³² She made the point that nannies are in the difficult and unusual position of having to advocate for formal employment:

You don't go to McDonalds and say, "Well, are you paying me on the books?" It's just your responsibility as an employer. That's not the case with nannies. You have to bring it up, you have to convince, sometimes you have to demand . . . [A]s a nanny you have to be the person that . . . bring[s] this up and ask[s] for it before you start²³³

Often, she said, parent-hirers refuse to acquiesce.²³⁴ These types of stories suggest that tax reporting and worker status can be a source of conflict for nannies and their parent-hirers, aligning with one of the major themes from the Reddit survey. In contrast to stories of conflict, principals at payroll companies and professional nanny organizations also shared positive outcomes from negotiations.²³⁵ They reported that when workers provided detailed information about tax amounts (and other benefits), parent-hirers were more likely to agree to pay them on the books.²³⁶ Both payroll company experts, Jay Schulze and Tom Breedlove, said that once a family likes a nanny, they often work to keep them and are willing to accommodate their pay and tax preferences, whether it's on the books or off.²³⁷

Three experts observed that nannies and parent-hirers often share a preference for informality, which makes negotiations on this point easier.²³⁸ As Senator Lydia Edwards put it, often "neither party is interested in paying their share of taxes."²³⁹ Although this contrasts with our survey and Reddit analysis, which revealed a preference for formality, these experts' perspectives likely reflect the preferences of the nanny population that we found difficult to observe.

232. Zoom Interview with Sue Downey, *supra* note 159.

233. *Id.*

234. *Id.*

235. Zoom Interview with Jay Schulze, *supra* note 201; Zoom Interview with Tom Breedlove, *supra* note 61; Zoom Interview with Marcia Hall, *supra* note 61.

236. Zoom Interview with Jay Schulze, *supra* note 201; Zoom Interview with Tom Breedlove, *supra* note 61; Zoom Interview with Marcia Hall, *supra* note 61.

Jay Schulze described one nanny who called his payroll services for advice about negotiating benefits with a prospective parent-hirer, including tuition reimbursements and retirement benefits. Zoom Interview with Jay Schulze, *supra* note 201. The parent-hirer called Jay Schulze after the interview to say that she was impressed by the nanny's level of preparation. *Id.*

237. Zoom Interview with Tom Breedlove, *supra* note 61; Zoom Interview with Jay Schulze, *supra* note 201.

238. Zoom Interview with Sen. Lydia Edwards, *supra* note 194; Zoom Interview with Sue Downey, *supra* note 159; Zoom Interview with Marcia Hall, *supra* note 61.

239. Zoom Interview with Sen. Lydia Edwards, *supra* note 194.

2. Pay Arrangements

Echoing the Reddit analysis, experts also revealed that there is great diversity in *how* parent-hirers incorrectly report nannies' income. Many arrangements defy simple categorization as either formal employment or informal cash work.

Some parent-hirers report nannies' pay to tax agencies but do so incorrectly. Parent-hirers frequently misclassify nannies as independent contractors²⁴⁰ and issue Form 1099s at the end of the year.²⁴¹ Two experts also spoke of parent-hirers who reported nannies as employees of the family's nonhousehold business.²⁴² In these cases, nannies received a Form W-2 at the end of the year that listed an unknown business as their employer.²⁴³ Both of these arrangements allow families to report their nannies' pay while avoiding the significant rule complexity that adheres to domestic employee status (and, in the latter case, to illegally deduct the pay).²⁴⁴ Several experts raised this complexity as a barrier to proper tax reporting. Tom Breedlove said that nannies often express to him the concern that their employers "don't want to deal with the cost and time" of correct reporting.²⁴⁵ Marcia Hall of the International Nanny Association made a similar point: "Parents who don't employ a payroll service, who can't afford [to], feel completely lost. Doing taxes to try to be an employer is really hard."²⁴⁶

Advocates, payroll company representatives, and labor organizers also shared stories of nannies who received some portion of pay "on the books" and another portion in unreported cash—a practice similarly confirmed in Reddit posts. Experts offered different motivations for this partial reporting arrangement. Alejandra Cuestas-Jaimes suggested that employers likely did so to avoid overtime pay requirements, as overtime pay was often the portion paid in cash (at the regular wage rate rather than the overtime rate).²⁴⁷

240. Nearly all nannies are properly classified as employees. *See supra* notes 81–83 and accompanying text.

241. Similarly, one nanny advocate described parent-hirers who pay cash (and don't issue a Form 1099) but encourage nannies to report income at tax time, presumably as independent contractors. Zoom Interview with Victor Narro, *supra* note 159. Marcia Hall described a parent-hirer who agreed to withhold and remit taxes, but on the condition that they would also withhold their employer portion of payroll taxes from the worker's pay—shifting the burden of the employer's share of payroll taxes to the nanny (rather than grossing her up for the taxes *the nanny* would have to pay, which was discussed in the Reddit posts). Zoom Interview with Marcia Hall, *supra* note 61.

242. Zoom Interview with Rocío Alejandra Ávila, *supra* note 124; Zoom Interview with Marcia Hall, *supra* note 61.

243. Presumably, these parent-hirers inappropriately deducted the nannies' wages from the business's income, obtaining a tax benefit that is denied to domestic hirers.

244. *See supra* notes 88–91 and accompanying text.

245. Zoom Interview with Tom Breedlove, *supra* note 61. This viewpoint was reflected in some of the policy prescriptions that several experts shared with us (e.g., make the tax compliance process simpler for employers). *See* Part III for further discussion.

246. Zoom Interview with Marcia Hall, *supra* note 61.

247. Zoom Interview with Alejandra Cuestas-Jaimes, *supra* note 159. This also came up in our Reddit analysis. One post (nine comments and six upvotes) reads:

Others speculated that nannies and parent-hirers may decide on such an arrangement to ensure that the nanny's reported income remained low enough to qualify them for means-tested public benefits, such as Section 8 vouchers or Medicaid.²⁴⁸ Sue Downey reported hearing of nanny placement agencies that suggest such an arrangement to parent-hirers to bring the nanny's pay within parent-hirers' budgets.²⁴⁹

* * *

In sum, our survey, Reddit analysis, and expert interviews support three central findings on nannies' tax experiences and preferences. First, the white, documented women who appear to dominate the profession and our survey prefer and experience employment status and formality. Our Reddit analysis corroborates these preferences. However, expert interviews suggest unique tax experiences, preferences, and tradeoffs for nannies who are missing from our survey and Reddit, including undocumented nannies and those reliant on means-tested public benefits. This finding cautions against extrapolating our empirical results to the most vulnerable segments of the nanny workforce. Second, even as the formal/informal dichotomy often surfaces in discussions of nannies, our findings uncover a spectrum of pay arrangements. These two findings pave the way for the following Part, where we discuss the paper's third finding—the need for cautious scrutiny of any simple enforcement-based solutions.

III. IMPLICATIONS FOR POLICYMAKING

At bottom, our research adds complexity to any simple enforcement-based solution to informality in the nanny sector. The predominant concern in the literature around low compliance is valid, but increasing enforcement without more fundamental structural reform may adversely affect the most vulnerable nannies. Enforcement should be approached carefully, ideally after increasing incentives to comply with reporting rules.

Our research suggests that many nannies would benefit from increased enforcement of nanny tax obligations against parent-hirers. Additionally,

So I have some interviews set up through this agency which I'm super excited about...[sic] great pay and guaranteed hours...[sic] but the agency's policy for overtime with any of these families is that the first [forty] hours worked are paid legally on the books and any hours worked after that are paid in cash at the same hourly rate that you'd make before [forty] hours . . . [A]ny amount of being paid off the books makes me uncomfortable. . . . I'm just nervous and wish I could work [one-hundred percent] on the books. Any tips for getting them to see my point of view that overtime is something that we as nannies deserve and that it's against the law to not pay us overtime?

cheeseandcrackers312, *Tax Question*, REDDIT (June 23, 2021, 8:07 AM), https://www.reddit.com/r/Nanny/comments/o6dizs/tax_question (on file with the *Iowa Law Review*).

248. Zoom Interview with Haeyoung Yoon, *supra* note 186; Zoom Interview with Jay Schulze, *supra* note 201; Zoom Interview with Tom Breedlove, *supra* note 61.

249. Zoom Interview with Sue Downey, *supra* note 159.

several of our experts advocated enforcement-based reforms. Nirali Patel of Greater Boston Legal Services noted that “[i]f we want to pursue [worker] misclassification, we need the IRS to enforce misclassification.”²⁵⁰ Jay Schulze of HomeWork Solutions, Inc., wished that the IRS would “put some teeth behind enforcement,” especially “where [the] IRS is missing out on significant amounts of revenue and employees are being deprived of benefits that they deserve and to which they’re entitled.”²⁵¹ Kelsey Chapple of Bet Tzedek Legal Services also lamented the fact that hiring families face no penalties for failing to provide correct and complete tax and income information to the nannies they hire.²⁵²

Anecdotally, many parent-hirers presume that nannies prefer informality.²⁵³ In contradiction to this presumption, however, nannies in our survey, as well as on Reddit, expressed a distinct preference for formal employment. Increased enforcement would benefit those nannies who prefer formality to the extent that it drives parent-hirers to comply with tax reporting rules. Any increased enforcement efforts should be targeted at higher-income parent-hirers.

But increased enforcement is not without costs for both the IRS and vulnerable nannies. The IRS regularly faces criticism for what is perceived as aggressive enforcement of tax laws.²⁵⁴ Most recently, backlash over anticipated enforcement increases led members of Congress to successfully demand cuts to IRS funding.²⁵⁵ The IRS has also faced recent criticism for disproportionate enforcement of tax returns filed by low-income taxpayers as well as Black taxpayers.²⁵⁶ These risks are heightened when the IRS seeks to enforce poorly-designed rules or rules that apply to legal transactions subject to other flawed policies.

Our research suggests that nanny tax rules and administrative requirements are overly complex, creating incentives to skirt the rules.²⁵⁷ As Tom Breedlove of HomePay said, “When you stop to look at [all the employer] obligations

250. Zoom Interview with Nirali Patel, *supra* note 202. She also described the current lax enforcement environment, stating that during her two years representing workers in misclassification petitions to the IRS, “[she hasn’t] seen the IRS send any notices to employers.” *Id.*

251. Zoom Interview with Jay Schulze, *supra* note 201.

252. Zoom Interview with Kelsey Chapple, *supra* note 195. She explained, “Nannies/caregivers don’t get the same information that other workers get just because a private party is hiring them.” *Id.*

253. Forde, *supra* note 42; *Should I Be Paying a Nanny “Under the Table?”*, NANNYPAY (Mar. 21, 2019), <https://www.nannypay.com/dont-go-under-by-paying-under-the-table> [<https://perma.cc/8TYT-VKPQ>] (offering a hypothetical in which the nanny requests to be paid under the table); *Nanny Wants to Be Paid Under the Table?*, GTM PAYROLL & HR (Mar. 29, 2024), <https://gtm.com/household/nanny-wants-under-the-table-pay> [<https://perma.cc/9ZZR-ELPZ>].

254. Rappeport, *supra* note 20.

255. *Id.*

256. See generally Elzayn et al., *supra* note 21 (finding that, due to high rates of EITC audits, Black taxpayers are audited nearly three to five times more than non-Black taxpayers, despite the fact that this pattern does not maximize the detection of underreported taxes); Jonathan Franklin, *IRS Chief Says Agency Is ‘Deeply Concerned’ by Higher Audit Rates for Black Taxpayers*, NPR (May 16, 2023, 5:59 PM), <https://www.npr.org/2023/05/16/1176441745/irs-audits-black-taxpayers> [<https://perma.cc/6KTH-NHW3>].

257. See *supra* notes 88–91 and accompanying text.

... it's pretty ridiculous—local, state, and federal taxes, and labor laws tracking PTO and disability.”²⁵⁸ He argued that this complexity is “driving down compliance.”²⁵⁹ Our research also points to other legal systems that create strong incentives for noncompliance, most notably immigration²⁶⁰ and public benefits.²⁶¹ These misaligned incentives create traps for well-meaning people struggling to navigate overlapping legal systems. Increased enforcement will catch many such people merely for responding to incentives created by the very same government enforcing the tax laws. Worse, those affected by immigration laws and public benefit rules are among the most vulnerable.

Our research reveals at least three axes for structural reform. First, the reporting process must be streamlined. Rules at the state level are particularly byzantine. Second, immigration reform is necessary to bring informal workers out of the shadows. Workers will not feel safe reporting their wages if they fear deportation.²⁶² Third, policymakers must reform means-tested public benefits programs with the recognition that benefits cliffs lead to underreporting. Increasing enforcement without repairing these systemic problems risks harming the most vulnerable nannies while also likely failing to increase compliance. Fleshing out each of these reforms is beyond this Article’s scope; we offer instead a few initial suggestions.

The process for reporting nannies’ wages to state and federal tax and employment agencies should be streamlined and simplified. Several experts, including Tom Breedlove, Sue Downey, and Marcia Hall, made a similar point.²⁶³ Currently, parent-hirers must report wages separately to the Social Security Administration, the IRS (on a Schedule H), and state employment and tax agencies.²⁶⁴ While federal reporting is done annually, many states require quarterly reports.²⁶⁵ Moreover, state and federal rules may impose

258. Zoom Interview with Tom Breedlove, *supra* note 61.

259. *Id.* Jay Schulze of HomeWork Solutions, Inc. made an interesting contrary argument about the effects of complexity on compliance: “[M]aking filing on [the] federal side an annual requirement rather than quarterly might have made it easier to not think about it.” Zoom Interview with Jay Schulze, *supra* note 201.

260. See *supra* notes 222–23 and accompanying text.

261. See *supra* notes 192–93, 248 and accompanying text.

262. See, e.g., JOHN MORTON & M. PATRICIA SMITH, REVISED MEMORANDUM OF UNDERSTANDING BETWEEN THE DEPARTMENTS OF HOMELAND SECURITY AND LABOR CONCERNING ENFORCEMENT ACTIVITIES AT WORKSITES (2011), <https://www.dol.gov/sites/dolgov/files/ofccp/regs/compliance/directives/files/DHSICE-DOLMOU-Final3-31-2011ESQA508c.pdf> [<https://perma.cc/C9RC-93GZ>] (detailing how ICE would “refrain from engaging in civil worksite enforcement activities” at worksites being investigated by DOL).

263. Zoom Interview with Marcia Hall, *supra* note 61; Zoom Interview with Tom Breedlove, *supra* note 61; Zoom Interview with Sue Downey, *supra* note 159. Downey wrote in a follow-up email from her interview, received by Emily Satterthwaite on October 15, 2023, and on file with authors, “I would just ask that the law be clear so everyone could understand and that the process was easy to complete. Parents have a lot on their plate- it seems like this could be so much easier.”

264. See *supra* notes 88–91 and accompanying text; SOC. SEC. ADMIN., 05-10012, HOUSEHOLD WORKERS 1–2 (2024), <https://www.ssa.gov/pubs/EN-05-10021.pdf> [<https://perma.cc/SPF5-DUZG>].

265. See, e.g., EMP. DEV. DEP’T, *supra* note 90, at 15.

different thresholds for reporting, which means that someone may have a state filing obligation before their federal obligation kicks in.²⁶⁶ These rules are designed for business hirers; they are too complex for most ordinary people to navigate without paid professional help.²⁶⁷

Several changes could simplify the reporting process. For one, states should adopt the federal process and require only annual reporting for domestic employees. Even better, federal and state agencies should collaborate to create a unified nanny-tax portal that would allow parent-hirers to report nannies' wages only once each year.²⁶⁸ The portal could automatically calculate the payroll and income taxes due at both state and federal levels and offer estimates earlier in the year to assist in planning. To eliminate the complex step of applying for an EIN, hirers could be given the option to report caregivers' wages under hirers' Social Security numbers, as they already can when reporting (for income tax purposes) payments to independent contractors on form 1099-NEC.

Immigration reform is a fraught topic that we are unlikely to resolve in this Article. Yet we must acknowledge its importance, a sentiment shared by several experts. As Tom Breedlove said, "We can never have a great workforce or economy when people are living in the shadows."²⁶⁹ The most recent estimates suggest that nearly twenty percent of nannies in the United States lack formal work authorization.²⁷⁰ Many of these nannies fear deportation if they expose themselves to government agencies, including the IRS.²⁷¹ A path to citizenship would create security and belonging to incentivize tax compliance.²⁷²

Given the low likelihood of a broad path to citizenship,²⁷³ perhaps a reform targeting caregivers would be more politically feasible. For instance, Congress could enact a path to citizenship that prioritizes caregivers.²⁷⁴ As

266. See *supra* note 91 and accompanying text.

267. Even tax professionals have difficulty navigating the specific domestic employee reporting rules. See *supra* text accompanying notes 197–99.

268. The recent state-federal collaboration to pilot the Direct File program offers a possible template for such inter-government collaboration. See *IRS Direct File Pilot*, IRS (June 3, 2024), <https://www.irs.gov/about-irs/strategic-plan/direct-file> [<https://perma.cc/PYL9-FGCX>] (discussing state tax agencies' partnerships with the IRS on integrated state-federal tax filing).

269. Zoom Interview with Tom Breedlove, *supra* note 61.

270. See *supra* Table 1.

271. MUÑOZ, *supra* note 29, at xvi, 121–22.

272. See, e.g., Audrey Macklin, *Public Entrance/Private Member*, in *PRIVATIZATION, LAW, AND THE CHALLENGE TO FEMINISM* 218, 227 (Brenda Cossman & Judy Fudge eds., 2002) (arguing from a Canadian perspective that "female migrant workers have traditionally been admitted through the servant's entrance" and "work authorizations are temporary not because [] the workers desire to remain only temporarily").

273. See, e.g., Kate Santaliz, Frank Thorp V & Zoë Richards, *Congress Unlikely to Include a Pathway to Citizenship in Its Border Deal*, NBC NEWS (Nov. 27, 2023, 10:13 PM), <https://www.nbcnews.com/politics/congress/congress-unlikely-include-pathway-citizenship-border-deal-rcna126928> [<https://perma.cc/c/7CHG-C9TT>] (detailing congressional disagreement over pathway-to-citizenship legislation).

274. See Trudy Rebert, *To Meet the Need for Home Care Workers, Provide a Pathway to Citizenship*, GENERATIONS: AM. SOC'Y ON AGING (Mar. 23, 2022), <https://generations.asaging.org/pathway-citizenship-direct-care-workers> [<https://perma.cc/YEN6-7HSC>] (advocating such a policy). The

Senator Edwards said, “The men and women who do childcare work should be welcomed and given the right to stay.”²⁷⁵ The aging of the U.S. population and concerns over elder care might increase public support for a policy that targets paths to citizenship for caregivers of both young children and older adults in the coming years.²⁷⁶

Thornier questions include required work durations and how caregivers’ family members would be treated for pathways to permanent residency. Consider Canada’s experience, where early versions of a foreign caregiver-targeted pathway to permanent residency precluded the ability for caregivers to bring family with them.²⁷⁷ The current Home Child Care Provider and Home Support Worker five-year pilot programs expressly, and more inclusively, “let qualified caregivers *and their family members* come to Canada with the goal of becoming permanent residents.”²⁷⁸ The pilot programs also reduce the Canadian work experience requirement necessary for permanent residency from twenty-four months to twelve months.²⁷⁹ Without endorsing specific requirements for pathways, we note that such pathways may encourage formal work and strengthen nannies’ bargaining position by increasing the proportion of documented nannies.²⁸⁰

Likewise, public benefit systems should be reformed with an eye to their disincentive to formalize caregiving work. Because of benefit cliffs, nannies

Citizenship for Essential Workers Act, proposed in 2021 by Senators Alex Padilla and Elizabeth Warren as well as Representatives Joaquin Castro and Ted Lieu, would have provided a path to citizenship for workers deemed essential during the COVID-19 pandemic, including domestic workers. S. 747, 117th Cong. (2021).

275. Zoom Interview with Sen. Lydia Edwards, *supra* note 194.

276. Rebert, *supra* note 274; see also Benjamin H. Harris & Liam Marshall, *Immigration to Address the Caregiving Shortfall*, BROOKINGS (Apr. 2, 2024), <https://www.brookings.edu/articles/immigration-to-address-the-caregiving-shortfall> [<https://perma.cc/gPWY-WEN8>] (documenting the impact of a rapidly aging U.S. population on the demand for and price of caregiving; identifying immigration as a partial solution but noting that “since immigrant workers are especially vulnerable to abuse and exploitation, reforms providing increased worker protections are vital for retaining existing care workers and attracting new ones”).

277. Macklin, *supra* note 272, at 229–31 (discussing the Foreign Domestic Movement (“FDM”) Program). Macklin critiques how “[l]ive-in caregivers are explicitly prohibited from bringing any dependants [sic] with them, even if their employer consents” as if “the unpaid labour the caregiver might provide to her own family if they were in Canada would distract her from devoting her labour power to providing childcare and household labour to other people’s families.” *Id.* at 230; see also Rachel K. Brickner & Christine Straehle, *The Missing Link: Gender, Immigration Policy and the Live-In Caregiver Program in Canada*, 29 POL’Y & SOC’Y 309, 311 (2010) (describing how the FDM Program in 1981 was the predecessor to the 1991 Live-In Caregiver program).

278. *Home Child Care Provider Pilot and Home Support Worker Pilot*, GOV’T CAN. (June 24, 2024), <https://www.canada.ca/en/immigration-refugees-citizenship/services/immigrate-canada/caregivers/child-care-home-support-worker.html> [<https://perma.cc/6RXU-2ECJ>] (emphasis added).

279. *Program Delivery Update: Home Child Care Provider Pilot and Home Support Worker Pilot*, GOV’T CAN. (July 18, 2023), <https://www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/operational-bulletins-manuals/updates/2023-home-child-care-support-pilot-job-aid.html> [<https://perma.cc/456E-2LWQ>].

280. We thank Susie Morse for this point. See generally Susan Morse, *Going Formal: The Tax Lives of Nannies*, JOTWELL (Mar. 8, 2024), <https://tax.jotwell.com/going-formal-the-tax-lives-of-nannies> [<https://perma.cc/DPJ4-JFNF>] (reviewing this Article).

who receive vital public benefits reasonably fear losing support if they report their full income. Advocates have documented such cliffs for Section 8 housing vouchers,²⁸¹ Medicaid, and SNAP, among others.²⁸² Again, general reforms, such as increasing benefit programs' income caps²⁸³ or making phaseouts more gradual, would help here.²⁸⁴

More creative solutions targeting care work are possible as well. For instance, public benefit programs could offer generous income exclusions to workers who report caregiving income.²⁸⁵ Tying such employee exclusions to the employer's EINs from a Schedule H should incentivize employees to seek employer compliance. Or care workers could become eligible for an additional caregiver cash benefit to offset other benefit reductions.²⁸⁶ For example, in Washington, D.C., early childhood educators, including those deemed an "associate caregiver" or "home provider," who worked at least ten hours per week received supplemental payments between \$5,000 and \$14,000.²⁸⁷

281. Bunny McFadden, *Living on the Edge: Why Some California Women Try to Avoid a Raise*, GUARDIAN (May 9, 2023, 6:06 PM), <https://www.theguardian.com/us-news/2023/may/09/benefits-cliff-housing-vouchers-cost-of-living> [<https://perma.cc/4RE7-SEWM>] (discussing the dilemma faced by women who risk losing rental support if they receive a wage increase).

282. JULIANNA SAMPER, ADAM HARTMANN & AMELIA JOSEPHSON, FIN. HEALTH NETWORK, THE BENEFITS CLIFF DILEMMA: NAVIGATING WAGE INCREASES AND PUBLIC BENEFITS 1–2 (2023), <https://finhealthnetwork.org/wp-content/uploads/2023/04/FSL-Learning-Agenda-Benefits-Cliff-Brief-2023.pdf> [<https://perma.cc/AGS8-6YT4>] (documenting benefit cliffs faced by care workers).

283. Several states have recently enacted legislation to this effect to reduce the impact of benefit cliffs. See *Introduction to Benefits Cliffs and Public Assistance Programs*, NAT'L CONF. STATE LEGISLATURES (Nov. 29, 2023), <https://www.ncsl.org/human-services/introduction-to-benefits-cliffs-and-public-assistance-programs> [<https://perma.cc/H3GA-26YJ>] (listing several states that increased public benefit income caps between 2021 and 2023, including Colorado, Indiana, and Nebraska).

284. SAMPER ET AL., *supra* note 282, at 9 (making this point).

In addition to encouraging informal work, benefit cliffs can discourage workers from taking on additional work and even punish workers who receive a raise. Some states have enacted reforms to address these concerns. For instance, Indiana recently enacted a law that ignores up to \$15,000 in increased earnings for certain families already deemed eligible for Temporary Assistance to Needy Families ("TANF"). See H. Enrolled Act No. 1009, 122d Gen. Assemb., Reg. Sess. (Ind. 2021) (providing an exclusion of \$15,000 increased earnings as long as the earner is twenty-three or younger and is enrolled in an education or apprenticeship program).

285. Imagine a means-tested public benefit that begins to phase out when annual income exceeds \$20,000. If the program provides a \$10,000 income exclusion for caregivers, a nanny who earns \$30,000 in a year would still fall below the phase-out threshold. The exclusion could be made optional for benefits that phase in at low-income levels. We thank Katie Pratt for suggesting a version of this reform.

286. Imagine a nanny who would be eligible for \$500 in monthly SNAP benefits absent their caregiving income, which reduces their monthly benefit to \$200. A hypothetical caregiver benefit could provide the nanny \$300 per month to compensate her for the lost benefits.

Recent Florida legislation offers a possible model. If participants in a state workforce education program suffer a reduction or loss of public benefits due to the program's stipend, the stipend increases to offset the loss. See S.B. 1190, 2023 Leg., Reg. Sess. (Fla. 2023) (allowing an increase in the stipend up to the maximum SNAP benefit for a single person).

287. D.C. OFF. OF THE STATE SUPERINTENDENT OF EDUC., FREQUENTLY ASKED QUESTIONS (FAQ): EARLY CHILDHOOD EDUCATOR PAY EQUITY FUND 2, 7 (2022); see also Office of the State Superintendent of Education Pay Parity Program for Early Childhood Educators Authorization Temporary Amendment Act of 2022, Council B. 24-126, 69 DCR 003016 (D.C. 2022) (authorizing

Reforming public benefits along these lines would subsidize care work by focusing on workers' needs, in contrast to current parent-focused subsidies.²⁸⁸ Several experts emphasized the need to shift reform priorities to center on workers' needs. Anna Powell, Senior Research and Policy Associate at the Center for the Study of Child Care Employment at UC Berkeley, argued that we should "develop a system that benefits the caregiver, based on the caregiver's situation, not the parent's."²⁸⁹

This discussion is not meant to be exhaustive. Rather, it starts the conversation about reforms to better support nannies by incentivizing reporting and compliance. Policymakers and advocates concerned about vulnerable workers should consider prioritizing such reforms before pushing for increased enforcement.

CONCLUSION

Nannies and other domestic workers nurture humanity, yet society struggles to support them in kind. To do so requires a keen understanding of their preferences and vulnerabilities. We set out to develop such an understanding and learned firsthand the challenges of gathering representative data about a workforce marked by informality—which we believe is largely defined by proper tax reporting—as well as isolation and precarity. Nannies have little to gain from disclosing information that could put them or their parent-hirers at risk.

Perhaps unsurprisingly, the fifty-seven survey responses we eventually gathered were predominantly from nannies treated by their parent-hirers as formal employees and preferring such treatment. We were unable to reach informal, undocumented, or non-English-speaking nannies, but even without extrapolation, our formality-preferring findings contradict prevailing assumptions.

temporarily "the Office of the State Superintendent of Education to create a grant program that supports pay parity for early childhood educators").

The D.C. program required employment by a "child development facility licensed by OSSE," D.C. OFF. OF THE STATE SUPERINTENDENT OF EDUC., *supra*, at 1, and such licensure generally exempts nannies as "care provided in a child's home by a caregiver paid for by a child's family." *Child Development Facilities Listing*, OFF. OF THE STATE SUPERINTENDENT OF EDUC. (May 31, 2024), <https://osse.dc.gov/publication/child-development-facilities-listing> (on file with the *Iowa Law Review*). This, however, is a policy choice and could, in another jurisdiction, reach a broader workforce.

288. The major federal childcare subsidies in the United States include the Child Care Development Block Grant program as well as tax benefits for parents, including the Child and Dependent Care Tax Credit and employer-provided dependent care assistance programs. See KAREN E. LYNCH, CONG. RSCH. SERV., R47312, THE CHILD CARE AND DEVELOPMENT BLOCK GRANT: IN BRIEF 1 (2022) (describing federal childcare support provided to low-income families); 26 U.S.C. § 21 (providing the Child and Dependent Care Tax Credit); 26 U.S.C. § 129 (providing for an exclusion of \$5,000 for qualified dependent care assistance provided by employers). All three programs provide support to parents rather than caregivers.

289. Zoom Interview with Anna Powell, Senior Rsch. & Pol'y Assoc., Ctr. for the Study of Child Care Emp., Univ. of Cal. Berkeley (Aug. 22, 2023). Natalie Renew went a step further, stating that "caregivers should have guaranteed incomes not based on the transactional work that they are doing but based on their identity as caregivers." Zoom Interview with Natalie Renew, *supra* note 180.

From our survey, our analysis of tax-related posts on Reddit, and our expert interviews, we learned of nannies' diverse tax preferences. No one-size-fits-all policy reform can advance the well-being of all nannies. Although the survey respondents and Reddit posters preferred formality, we learned from some respondents and expert interviews that informality may be preferred by nannies who are undocumented, need cash, or rely on public benefits. We also found that pay arrangements exist along a spectrum. Any binary conception of formality and informality thus oversimplifies reality.

As for policy implications, aggressive enforcement could adversely impact the most vulnerable nannies, even if there is a case for shoring up nanny tax compliance and deterring illegal behavior among parent-hirers. By providing a seminal glimpse into the tax lives of nannies, we hope to reassess and highlight how best to go about taxing and supporting nannies.