

A.M. Costa Rica Reprint

Your daily English-language news source

Monday through Friday

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Hiring uncovered workers is asking for a nightmare

By Garland M. Baker
Special to A.M. Costa Rica

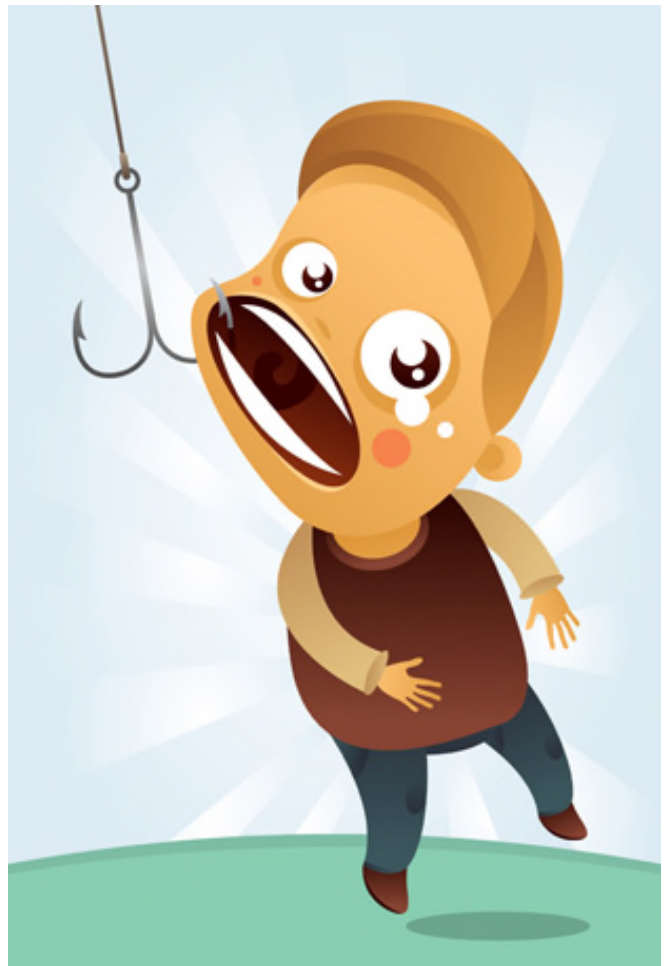
There is a popular adage in Costa Rica, *Pide perdón, no permiso*. Doing this can get an expat snagged into a big, expensive problem.

The saying means "ask forgiveness, not permission." It is a strategy used by Ticos and expats alike to get things done without going through the normal red tape. The scheme is also used to avoid traffic fines, building permits, payments, and the list is long.

The idea behind the concept is that if one asks permission to do something, the consequences are usually much more complex and expensive than just apologizing for doing it or a paying a fine. This practice is not recommended or condoned, and it should never be used when dealing with the legal insurance requirements for employees or workers.

Far too many expats are playing with fire when managing their household staffs and contract workers trying to save money. Some even play games with their laborers in their business.

The law in Costa Rica is very clear. Every worker in this country is required to have two insurance policies: A health policy with the Caja Costarricense de Seguro Social commonly known as the Caja, and the *riesgos de trabajo*, "workers' compensation," policy with the Instituto Nacional de Seguros, known as INS.



Employers must carry these policies for their workers. Independents must buy individual policies to cover themselves. Many expats do not understand these facts or choose to ignore them.

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The Caja provides medical insurance for wellness issues, not work-related accidents or health problems attributed to working conditions. If a worker gets hurt or sick on the job they go to the Instituto Nacional de Seguros facilities and not the Caja. That is why there are two distinct insurance programs.

It is illegal not to cover employees with both insurances, and it is illegal not to cover oneself if working as an independent contractor.

The reality is that many — if not most — independent blue-collar workers do not cover themselves with workers' compensation insurance. Moreover, in many cases, the contractors of such workers know they are not covered, increasing their liability in an accident.

The top labor court of the country, the Sala II, and the constitutional court, the Sala IV, have ordered contractors to pay medical expenses, even lifetime allowances, to hurt workers when they are not individually covered.

One insurance agent interviewed went as far as to say some workers choose where to have their accident because they do not want to have it in a place where their contractor or employer cannot pay. They hope for full disability and a lifetime of payoffs.

This is what happens when a worker gets hurt on the job of a homeowner: Juan cuts off a big toe while doing gardening. He is independent, using his own equipment. He goes to the Caja. They ask him, "How did you cut off your big toe?" He states "Gardening for the people who own Villa 123."

If he is bleeding to death, Caja physicians give him medical treatment and send a big bill to INS.

INS does not like getting bills from the Caja. When they cannot use their hospitals, they send claimants to private facilities because they get better services for a reasonable price. Juan is not bleeding to death, so the Caja sends him to INS. The person interviewing him asks the same questions and gets the same answers. He or she checks on a computer to see if Juan is covered. When the data shows he is not, Juan is sent to the *verificación de derechos* office for verification of his rights, and an inspector is assigned before the injured worker gets medical attention.

A Sala IV ruling requires Juan to get treatment before he bleeds to death, but the inspector makes up the case first, if he can. Where is INS going to get their money? From Juan? He has nothing but his weed eater. INS goes after anyone it can who may be responsible, including the homeowner. In those cases that have gone all the way to the labor or constitutional court, homeowners usually lose miserably. Liability can extend to homeowners associations and administrators of gated communities in some cases.

When hiring people as employees, expats should not adhere to the old adage but provide health insurance and workers' compensation to them as required by law. Costa Ricans who are retired and are covered by the Caja because they have a pension are not exempt. They need to be covered just like any other worker. Some do not want to be covered because they feel it will reduce their pensions. They want to be paid under the table. This is never a good practice.

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One example is a retired postal worker who did not want to be covered for this very reason. He ran errands for an expat. When he decided to quit, he threatened to turn his *patrón* over to the authorities for not paying his insurances as required by law. He received a four-figure dollar payoff to avoid the scenario.

To adhere to the law, when hiring someone as an independent contractor, for example a gardener, a homeowner should ask to the *riesgos de trabajo* policy payment receipt. In many parts of the country, this just is not practical, so there is another solution.

Randall Contreras of PRICOSE insurance agency said in an interview Friday that INS offers two basic types of homeowner policies: Hogar Seguro 2000 and Hogar Comprensivo. He stated that in his opinion the Hogar Seguro 2000 is outdated and does not provided the coverage needed for homeowners today. He said people still buy it because it is easy to obtain and meets the minimum requirements for banks when borrowing money for a home loan. The policy, among other deficiencies, does not provide any type of workers' insurance.

Hogar Comprensivo is a better policy, and it does provide insurance for one domestic worker and two outside contractor types, like gardeners and maintenance people, he said. The policy can also be adjusted for more liability coverage.

Hogar Comprensivo is also a replacement value policy for covered assets with a low deductible while Hogar Seguro uses some weird calculation formula to determine loss, and it rarely benefits the insured.

Buying homeowners insurance with *riesgo de trabajo* does not exempt independent workers from having their own private coverage or an employer or contractor requiring same. It could help an expat to cover a work-related accident or avoiding a hook in a dishonest claim.

Garland M. Baker is a 42-year resident and naturalized citizen of Costa Rica who provides multidisciplinary professional services to the international community. Reach him at info@crexpertise.com. Baker has undertaken the research leading to these series of articles in conjunction with A.M. Costa Rica. Find the collection at <http://crexpertise.info>, a free reprint is available at the end of each article. Copyright 2013, use without permission prohibited.

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