

SS-8 Determination—Determination for Public Inspection

Occupation 03MIS.9 MiscLaborServices	Determination: <input checked="" type="checkbox"/> Employee <input type="checkbox"/> Contractor
UILC	Third Party Communication: <input checked="" type="checkbox"/> None <input type="checkbox"/> Yes

Facts of Case

The firm offers franchises for the operation of business specializing in the sale of printing. The worker was engaged to prepare the CEO's home for business entertainment purposes. The worker indicated that she also provided laundry, cleaning, and cooking services at the residence on a regular basis. The firm paid the worker, and issued to her Forms 1099-MISC at year-end to report the monies she received for her services as non-employee compensation.

The worker was experienced in residence management services. Assignments and instructions were received verbally from the CEO. The worker and the CEO determined the work methods by which to perform the services. The worker performed her services personally, Monday through Friday, for 40 hours per week, according to a schedule established by the CEO. Problems and complaints were reported to the CEO for resolution purposes.

All equipment, tools and supplies needed to perform the services were provided for the worker's use. The worker did not incur work related expenses. The worker was paid on an hourly wage basis for her services. The worker did not incur economic loss or financial risk with regard to the services she performed for the firm's CEO.

The firm carried workers' compensation insurance on the worker. Employment benefits were not made available to the worker. The worker did not perform similar services for others. The worker posted her resume profile on a job search website for the purpose of obtaining employment. The work relationship was continuous as opposed to a one-time transaction.

Analysis

The facts provided for this case do not evidence the worker's behavioral control of the work relationship. The worker followed the CEO's instructions, schedule, and routine in the performance of her services. The worker's services were performed personally, at the CEO's residence. The worker used equipment, tools, and supplies provided to her. The information provided indicates that the firm's CEO retained the right to direct and control the worker to the extent necessary to protect company interests, and his residential investments.

The facts provided for this case do not evidence the worker's financial control of the work relationship. The worker's remuneration was established by the firm. The worker had no opportunity for profit or loss as a result of the services she performed. "Profit or loss" implies the use of capital by a person in an independent business of his or her own. The worker did not have a significant investment in the facilities, equipment, tools, or supplies used to perform her services for the firm. The term "significant investment" does not include tools, instruments, and clothing commonly provided by employees in their trade; nor does it include education, experience, or training.

The worker performed services as requested by the firm's CEO, for an indefinite period of time, and both parties retained the right to terminate the work relationship at any time without incurring liabilities. The facts provided for this case do not evidence that the worker was engaged in an independent enterprise, but rather show that she performed her services as requested by the firm's CEO.

In general, domestic services include services of a household nature in or about a private home performed by cooks, waiters, butlers, housekeepers, maids, valets, babysitters, janitors, laundresses, caretakers, handymen, gardeners, grooms, chauffeurs of family-use vehicles, and companions for convalescents, the elderly, or the disabled. A private home is a fixed place of abode of an individual or family.

Remuneration paid for domestic services is not subject to federal income tax withholding, unless both the employer and employee voluntarily agree to it. See Code section 3401(a)(3). The domestic employee may make a request for income tax withholding by completing Form W-4, "Employee's Withholding Allowance Certificate," and may also request advance payments of the earned income credit by completing Form W-5 if he/she is eligible. However, there are no similar exceptions for FICA and FUTA taxes.

Because the worker's services constitute domestic services, the employer is responsible for withholding the employee's share of the FICA tax if the worker was paid up to a specific income threshold amount in each particular year. The wage threshold for withholding FICA tax in a specific year may be found in that year's Publication 926, Household Employer's Tax Guide, which can be obtained at www.irs.gov

The worker shall be found to be an employee for Federal employment tax purposes. For correction assistance, you may refer to Publication 4341, which can be obtained at www.irs.gov