

SS-8 Determination—Determination for Public Inspection

Occupation 03PMW.102 RepairMaintenanceWkr	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 payer is an individual desiring cleaning and childcare services in his home. As the payer, you engage the worker to provide the services. You reported the worker's remuneration on Forms W-2 for 2011 through 2015.

Information from the parties supports that when you engaged the worker in 2011, she provided childcare services on a daily basis. As your childcare needs decreased, the worker provided her services on a declining basis, but generally maintains a twice-weekly schedule. If problems or complaints occur, the worker contacts you for resolution. The worker is required to perform her services personally.

You provide the cleaning supplies. The worker does not incur expenses in the performance of her services. You pay the worker on a salary basis. Neither party indicated an investment by the worker in a related business, or the risk of the worker incurring a financial loss beyond the normal loss of compensation.

You do not make benefits available to the worker. Both parties reserve the right to terminate the work relationship at any time without incurring a penalty or liability. You do not prohibit the worker from providing similar services for others. There is no evidence presented that the worker advertises her services or maintains a business listing.

Analysis

Factors that illustrate whether there is a right to control how a worker performs a task include training and instructions. In this case, the worker provides her services according to your expectations. It is only reasonable to assume that you retain the right to change the worker's methods and to direct the worker to the extent necessary to protect your financial investment and ensure your satisfaction with her work. While you provide the worker with some freedom of action as to her schedule, this in and of itself does not determine the worker's status as an independent contractor. The whole relationship needed to be analyzed to determine the worker's correct employment tax status. The worker is required to perform her services personally, meaning she cannot engage and pay others to perform services for you on her behalf. If the services must be rendered personally, presumably the person or persons for whom the services are performed are interested in the methods used to accomplish the work as well as in the results. These facts show that you retain behavioral control over the services of the worker.

Factors that illustrate whether there is a right to direct and control the financial aspects of the worker's activities include significant investment, unreimbursed expenses, the methods of payment, and the opportunity for profit or loss. In this case, the worker did not invest capital or assume business risks, and therefore, does not have the opportunity to realize a profit or incur a loss as a result of the services provided. "Profit or loss" implies the use of capital by a person in an independent business of his or her own. You pay the worker on a salary basis. Workers are assumed to be employees if they are guaranteed a minimum salary. These facts show that you retain control over the financial aspects of the worker's services.

Factors that illustrate how the parties perceive their relationship include the intent of the parties as expressed in written contracts; the provision of, or lack of employee benefits; the right of the parties to terminate the relationship; the permanency of the relationship; and whether the services performed are part of the service recipient's regular business activities. In this case, the worker performs her services on a continuing basis. She is not engaged in an independent enterprise, but rather the cleaning and childcare services performed by the worker are a necessary and integral part of your business arrangement. Integration of the worker's services into the business arrangement generally shows that the worker is subject to direction and control. When the success or continuation of a business arrangement depends to an appreciable degree upon the performance of certain services, the workers who perform those services must necessarily be subject to a certain amount of control by the payer. The worker may provide similar services for others during the same time period; however, it is possible to for a person to work for a number of people or firms concurrently and be an employee of one or all of them. Although you do not provide benefits to the worker, both parties retain the right to terminate the work relationship without incurring a liability, a factor indicating an employer-employee relationship. These facts show that you retain control over the work relationship and services of the worker.

Based on the above analysis, we conclude that you have the right to exercise direction and control over the worker to the degree necessary to establish that the worker is a common law employee, and not an independent contractor operating a trade or business.