

SS-8 Determination—Determination for Public Inspection

Occupation 05CCP Personal Service Providers	Determination: <input checked="" type="checkbox"/> Employee <input type="checkbox"/> Contractor
UILC	Third Party Communication: <input checked="" type="checkbox"/> None <input type="checkbox"/> Yes

I have read Notice 441 and am requesting:

- Additional redactions based on categories listed in section entitled "Deletions We May Have Made to Your Original Determination Letter"
- Delay based on an on-going transaction
- 90 day delay

For IRS Use Only:

Facts of Case

In this case, the firm's member engaged the worker to provide services as a nanny who transported his children to school and practices, cooked dinner and did all the housework. The worker received a 2015 Form 1099-MISC for her services but received no pay document for her services in 2016. There was no written agreement.

Both parties agreed regarding the following information. The payer/member initially gave instructions to the worker to take care of all the children's needs, take them to practices, cook every night and clean. He provided a schedule for the worker to follow including what to clean on certain days. The worker determined the methods by which the assignments were performed and the worker would contact the payer if any issues or problems arose. There were no required reports. The worker usually worked set scheduled hours covering the afternoons and early evenings unless the payer was out of town. She worked mostly in the home as well as went grocery shopping and to practices. There were no meetings. The worker was to provide the services personally.

The payer/member provided everything that the worker needed to take care of his children. She provided the vehicle and he paid her for one tank of gas a month. The worker was paid a salary/set fee and had no other economic risk.

Both parties agreed that there were no benefits. Either party could terminate the relationship without incurring a liability. The worker did not provide similar services for others during the same time period. The relationship has ended.

Analysis

In determining whether an individual is an employee or an independent contractor under the common law, all evidence of both control and lack of control or independence must be considered. The relationship of the worker and the business must be examined. Facts that show a right to direct or control how the worker performs the specific tasks for which he or she is hired, who controls the financial aspects of the worker's activities, and how the parties perceive their relationship should be considered. The determination of the worker's status, then, rests on the weight given to the factors, keeping in mind that no one factor rules. The degree of importance of each factor varies depending on the occupation and the circumstances.

The worker was an employee based on common law. The worker provided child care services in the payer's home and was essentially a domestic worker. 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 worker is a household employee if the payer can control not only what work is done, but how it is done. It doesn't matter whether the work is full-time or part-time or that the worker was hired through an agency or from a list provided by an agency or association. It also doesn't matter whether the worker is paid on an hourly, daily, or weekly basis, or by the job.

In this case, the payer provided instructions and expectations, even if just initially and even if the work became routine. The payer retained the right to redirect the worker's activities as needed to ensure the care of his children whether or not he exercised that right. The worker's services were performed in the payer's home with the payer providing all needed materials and supplies. The worker worked set scheduled hours for an hourly rate of pay and had no other economic risk.

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.

Remuneration paid in any medium other than cash to an employee for domestic services in the private home of the employer, or for his/her personal wants and comforts, and not in the course of the employer's trade or business is not subject to FICA (Code section 3121(a)(7)(A)).

In conclusion, the employer of the worker is liable for FICA and FUTA taxes for the worker, subject to the certain thresholds. For further clarification of household employee issues, please see Publication 926, Household Employer's Tax Guide.