

SS-8 Determination—Determination for Public Inspection

Occupation

05CCP Child Care Providers

Determination:

☒ Employee

☐ Contractor

UILC

Third Party Communication:

☒ None

☐ 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

Information provided finds the firm is a private household that required daycare for her children. The worker provided services as a babysitter for tax years 2016 through 2018. Work assignments were given verbally about meals left prepared or changes in school schedules that may have affected her work schedule. The firm indicated the worker determined how she spends time during the day, while watching the children. The firm indicated she arrived at nine am and leaves when they get home around five five-thirty. There was no set time, only for naps. All services were performed in the home. She was required to perform services personally. The firm indicated they provided all equipment and supplies, to include gas to pick them up from school etc. The firm indicated the worker was paid a lump sum and given paid holidays. either party can terminate without incurring a penalty or liability.

The worker agrees she performs services for the firm as their nanny and introduced as such. She agrees the work hours are nine to five-thirty. She is paid on a set salary plus mileage and holiday pay. She picks the children up from school, cleans, does laundry, dishes, cook dinner at time etc. Services are performed at the firm's home. The worker is still employed.

Analysis

Based on the above analysis, we conclude that the worker performed services as domestic employee of the firm. The firm had the right to exercise direction and control over the worker to the degree necessary to ensure the safety of the children. The worker performed services solely for this family, and did not operate a day care facility.

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.