

SS-8 Determination—Determination for Public Inspection

Occupation

05CCP Childcare 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 indicates the "firm" is a private household who had been in need of a nanny for their children. The worker performed services as a nanny for tax years 2017 and 2018. The firm indicated there had been a verbal agreement between parties for the services provided and that the worker would pay her own federal and state taxes that were due. The firm indicated she had all the knowledge of her profession prior to starting. They indicated she took zero directions from them and took charge of every aspect of childcare. She planned her own schedule of childcare duties. The firm indicated she handled any issues and reported to them what the results were. Services were performed in their home, or at various doctor or therapy appointments etc. She was required to perform her services personally. The firm provided all equipment, supplies, food etc. The worker provided two car seats, she used when transporting the children. She was paid a weekly salary. No benefits were given.

The worker indicated she followed the parents instructions related to the children's diet, activities and discipline policies. Services were performed as needed according to their schedule. She worked Monday through Thursday six-thirty to six, or Wednesday through Saturday six-thirty to six, later if they could not return home on schedule. All services are performed in the home. She is required to perform her services personally. She agreed the firm provided all necessary equipment, food etc. She agreed she was paid a weekly wage. She received two weeks paid vacation, and two weeks of paid maternity leave. She indicated she provided the family with a two week notice.

Analysis

The question of whether an individual is an independent contractor or an employee is one that is determined through consideration of the facts of a particular case along with the application of law and regulations for worker classification issues, known as "common law." Common law flows chiefly from court decisions and is a major part of the justice system of the United States. Under the common law, the treatment of a worker as an independent contractor or an employee originates from the legal definitions developed in the law and it depends on the payer's right to direct and control the worker in the performance of his or her duties. Section 3121(d)(2) of the Code provides that the term "employee" means any individual defined as an employee by using the usual common law rules.

Generally, the relationship of employer and employee exists when the person for whom the services are performed has the right to control and direct the individual who performs the services, not only as to what is to be done, but also how it is to be done. It is not necessary that the employer actually direct or control the individual, it is sufficient if he or she has the right to do so.

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. We must examine the relationship of the worker and the business. We consider 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. The degree of importance of each factor varies depending on the occupation and the context in which the services are performed.

Therefore, your statement that the worker was an independent contractor pursuant to an agreement is without merit. For federal employment tax purposes, it is the actual working relationship that is controlling and not the terms of the contract (oral or written) between the parties.

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 or nannies, 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.

Nurses' aides and other unlicensed individuals normally perform services that are expected of maids and servants. Such services include bathing the individual, combing his/her hair, reading to the individual, arranging bedding and clothing, and preparing meals. These services are also considered domestic services.

Analysis

We have applied the above law to the information submitted. As is the case in almost all worker classification cases, some facts point to an employment relationship while other facts indicate independent contractor status. 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.

Evidence of control generally falls into three categories: behavioral control, financial control, and relationship of the parties, which are collectively referred to as the categories of evidence. In weighing the evidence, careful consideration has been given to the factors outlined below.

Factors that illustrate whether there is a right to control how a worker performs a task include training and instructions. In this case, you retained the right to change the worker's methods and to direct the worker to the extent necessary to protect your financial investment.

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, did not have the opportunity to realize a profit or incur a loss as a result of the services provided.

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 was not engaged in an independent enterprise, but rather the services performed by the worker were a necessary and integral part of your business. Both parties retained the right to terminate the work relationship at any time without incurring a liability.

Conclusion: Based on the information provided and common law I find the worker performed domestic services in the form of a nanny. The worker did not own or operate a registered day care center, to provide services for numerous families. She provided sole services for this family, in their home, caring for their two children. The firm provided all equipment, food, clothing etc necessary for their care. The worker was paid a set weekly salary indicating no opportunity for profit or loss.

For further clarification of household employee issues, please see Publication 926, Household Employer's Tax Guide.