

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**

The worker initiated the request for a determination of her work status as a nanny to two babies in tax year 2014; however, it appears the work relationship began in 2013. The 'firm' is a private household.

The firm/parent acknowledged the worker provided services as a babysitter and doing household chores. The parent stated that the worker agreed to a set rate with the understanding that it was not permanent work or schedule.

The worker indicated there was no specific training and instructions as she had prior experience. She had a daily schedule with the exception of occasional extra curricular activities that she would be instructed to dress them for and/or pack a bag. It was the parent that determined the methods by which the worker's services were performed. Any problems or complaints encountered by the worker were directed to the parent, a grandparent, or a friend of the parent for resolution. The worker's services were rendered generally from 7 am to 4:30 pm or later at the family's residence. The worker was required to perform the services personally; any additional personnel were hired and paid by the parent.

The parent responded that there was no specific training and instructions and the worker's job assignments were given verbally. The parent indicated the worker determined the methods by which the worker's services were performed. The worker directed any problems to the parent for resolution. The worker's services were rendered as needed at the home of the parent. The worker was required to perform the services personally.

The worker stated the parent provided all food, clothing, toys, etc.; everything needed to care for the children. The worker furnished nothing; the worker did not lease equipment, space, or a facility, and did not incur expenses in the performance of her job. The parent paid the worker an hourly wage. The worker was not at risk for a financial loss in this work relationship. The worker did not establish level of payment for services provided.

The parent indicated that nothing was provided to or by the worker, that the worker did not lease equipment, space, or a facility, or incur expenses in the performance of her duties for the parent. The worker was paid an hourly wage. The worker was not at risk for a financial loss in this work relationship. The worker and parent agreed to the level of payment for services provided.

The parent and worker agreed that the worker was not extended any benefits and that either party could terminate the work relationship without incurring a liability or penalty. The worker was not performing same or similar services for others during the same time frame. The worker stated she quit when she was told she would not be paid for the summer/6 weeks while parent was on vacation.

Analysis

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/nannys, 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.

Conclusion:

We conclude that the parent had the right to exercise direction and control over the worker to the degree necessary to establish that the worker was a common law/domestic employee, and not an independent contractor operating a trade or business.

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. The publication can be obtained at www.irs.gov.