

SS-8 Determination—Determination for Public Inspection

Occupation 05CCP Child Care 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

The worker initiated the request for a determination of her work status as a nanny in tax year 2018, for which she received Form 1099-MISC. She cared for three children in the family home, 5 days per week; and, in this capacity fixed meals, did laundry, drove them to school, helped with homework, and played games with them.

The worker was given specific instructions from the parent(s) related to the children's diet, activities, and household cleaning. The job assignments were given verbally or in written form from the parent(s); and, it was the parent(s) 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(s) for resolution. The worker's services were rendered in the family home Monday to Wednesday from 7:45am to 1:00pm and Thursday to Friday from 7:45am to 5:15pm. The worker was required to perform the services personally; and any additional personnel were hired and paid by the parents.

The parents provided all food, clothing, toys, etc. to care for children. The worker furnished nothing. The worker stated she was paid an hourly wage and was not covered under any workers' compensation insurance policy. 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.

There were no benefits offered to the worker. 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 firm's response was signed by the corporate officer, who is also a parent. The worker was hired as a nanny with duties that consisted of child care and meal preparation. The firm indicated there was a verbal agreement that nothing would be withheld from her remuneration. The SS-8 response consisted of the following: the worker was required to contact the parent if any problems or complaints arose; services rendered in the parents' home; the worker was paid approximately \$XX/month.

Analysis

A worker who is required to comply with another person's instructions about when, where, and how he or she is to work is ordinarily an employee. This control factor is present if the person or persons for whom the services are performed have the right to require compliance with instructions. Some employees may work without receiving instructions because they are highly proficient and conscientious workers or because the duties are so simple or familiar to them. Furthermore, the instructions, that show how to reach the desired results, may have been oral and given only once at the beginning of the relationship.

Payment by the hour, week, or month generally points to an employer-employee relationship, provided that this method of payment is not just a convenient way of paying a lump sum agreed upon as the cost of a job. In such instances, the firm assumes the hazard that the services of the worker will be proportionate to the regular payments. This action warrants the assumption that, to protect its investment, the firm has the right to direct and control the performance of the workers. Also, workers are assumed to be employees if they are guaranteed a minimum salary or are given a drawing account of a specified amount that need not be repaid when it exceeds earnings.

A person who can realize a profit or suffer a loss as a result of his or her services is generally an independent contractor, while the person who cannot is an employee. "Profit or loss" implies the use of capital by a person in an independent business of his or her own. The risk that a worker will not receive payment for his or her services, however, is common to both independent contractors and employees and, thus, does not constitute a sufficient economic risk to support treatment as an independent contractor.

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, 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 have considered the information provided by both parties this work relationship. Based on the above analysis, we conclude that the parents had the right to exercise direction and control over the worker to the degree necessary to establish that the worker was a household employee, and not an independent contractor operating a trade or business. 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.