

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

It is our usual practice in cases of this type to solicit information from both parties involved. After the worker's initial filing of the Form SS-8, Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding, we requested information from the payer concerning this work relationship. The payer provided information in regard to this work relationship by completing Form SS-8.

From the information provided the payer is an individual who required care for his children. The worker was engaged to provide babysitting and child care services. The payer believes the worker was not their employee while performing services for them. There was no written agreement between the payer and the worker. The payer reported the worker's 2018 earnings on a Form 1099.

The payer states they did not provide training to the worker but relayed the specific needs of the children. The worker's assignments were verbally communicated with the worker. Both the payer and the worker determined how the worker performed her services. The worker was required to notify the payer if any problems or complaints arose for their resolution. The worker was required to personally perform her services at the payer's home between 8 a.m. and 5 p.m. The worker's routine varied as she performed services as to what was needed for the day. The worker did not provide reports to the payer and she was not required to attend meetings. The payer was responsible for the hiring and paying of substitutes or helpers.

The payer provided the diapers and food to the worker in order for her to perform her services. The worker did not incur expenses and the firm states they reimbursed the worker for food for their children. The worker was compensated at an hourly rate. The payer states the worker established the level of payment for the services provided. The worker did not have an opportunity to incur a loss as a result of her services.

The worker performed similar services for others and she was required to seek the payer's approval to do so. The worker did not advertise her services. Either party could terminate the work relationship at any time without incurring a liability.

Analysis

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, worker was experienced in this line of work and did not require training or detailed instructions from the payer. The need to direct and control a worker and her services should not be confused with the right to direct and control. The worker's services were repetitive in nature so the payer did not need to provide the worker with daily assignments. The worker's routine varied due to the needs of the children being cared for but for the majority of the time, she performed services between 8 a.m. and 5 p.m. The worker was instructed on any special or specific need of the payer's child or children. Instructions given to the worker that show how to reach a desired result which may have been oral and given only once at the beginning of the relationship indicates control on how the worker performed her services. The payer relied on the worker's experience to perform her services but they retained the right to direct and control the worker and her services in order to protect and ensure the safety of their children.

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. There was no evidence presented or found in this investigation that indicates the worker owned and operated her own childcare facility or business. She did not have a financial investment in a business and did not have a significant investment that would cause her to have the opportunity to incur a loss or realize a profit as someone in business can.

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. Both parties retained the right to terminate the work relationship at any time without incurring a liability.

While the worker performed similar services for others, it is possible for a person to work for a number of people or firms concurrently due to financial need and the supporting of oneself and be an employee of one or all of whom engages her.

Based on the above analysis, we conclude that the payer had the right to exercise direction and control over the worker to the degree necessary to establish that the worker was a common law employee, and not an independent contractor operating a trade or business.

Publication 926, Household Employer's Tax Guide, can be found at www.irs.gov for further guidance on how to treat household workers.