

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 2019, for which she received Form 1099-MISC. The parents engaged her to work in their home. Her duties included caring for the children, bathing, preparing meals, feeding, transport to and from school, household chores, feeding the dog and cat, and letting the dog out.

The parent's signed response indicated the worker provided childcare services four days a week for about 40 hours.

The worker stated she was given specific instructions as to meal times, nap times, deliver/pick-up from school, and household chores to complete. The job tasks were given verbally or on a written list. The parents determined the methods by which the worker's services were performed. Any problems or complaints encountered by the worker were directed to the parents for resolution. The worker's services were rendered in the family home four days a week from 7am to 5:30pm and occasion the parent altered the hours. The worker was required to perform the services personally.

According to the parent, there was no specific training and/or instructions given to the worker. The worker was given verbal instructions tasks upon her arrival to work. The worker determined the methods by which she performed her job. Any problems or complaints encountered by the worker were directed to the parents for resolution. The worker's daily routine included childcare, feeding, diaper changing, and playing with the children. The worker's services were rendered four days per week, approximately 40 hours per week in the parents' home. The worker was required to perform the services personally.

Both parties acknowledge the parents provided childcare necessities (cribs, food, car seats, toys, diapers and wipes). The worker furnished her vehicle for transportation. The worker was paid an hourly wage/salary. The worker was not covered under any workers' compensation insurance policy. The worker was not at risk for a financial loss in this work relationship unless her vehicle was damaged. The worker did not establish the level of payment for the services provided.

The firm and worker concur that there were no benefits extended to the worker. Either party could terminate the work relationship without incurring a liability or penalty. The parent responded the worker was performing same or similar services for others during the same time frame; the worker disagreed. The worker quit and was paid for her services.

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.

If the services must be rendered personally, presumably the person or persons for whom the services are performed are interested in the methods used to accomplish the work as well as in the results.

The establishment of set hours of work by the person or persons for whom the services are performed is a factor indicating control. If the nature of the occupation makes fixed hours impractical, a requirement that workers be on the job at certain times is an element of control.

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.

The parent's 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, 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.

CONCLUSION

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 domestic/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.