

**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 firm is an individual that engaged the worker as a nanny from 2017 to 2020. The worker provided child care at the firm's residence. The worker submitted a Form SS-8 after receiving a Form 1099-Misc from the firm. The firm replied with a Form SS-8.

The worker completed an application for the job. The worker stated she received no specific instruction or training from the firm. According to the firm, the worker would care for one child during the day and get the other child on the school bus. Both parties agree the worker received her work assignments from the firm. She received those assignments verbally. The worker asserted the firm determined the methods by which those assignments were performed. The firm was responsible for problem resolution. The worker detailed her schedule as working Tuesday-Friday weekly taking care of the children. She would wake the children, get them dressed, feed them as well as other varying tasks as assigned to her by the firm. She received regular remunerations for her services. She indicated she was required to submit reports to the firm verbally or via text message whereas the firm specified no reports were required. She performed the services on the firm's premises. The worker was not required to attend meetings. The relationship between the parties was continuous, as opposed to a one-time transaction. The nature of this relationship contemplated that the worker would perform the services personally. The worker worked exclusively and on a continuing basis for the firm. Both parties agree the hiring and paying of substitutes or helpers was not applicable in this case.

The worker did not furnish any of the tools or equipment used in performing the services. The worker did not lease equipment. The worker did not incur any significant business expenses. The worker indicated she was paid hourly. However, the firm stated she was paid salary. The firm did not allow the worker a drawing account, or advances against anticipated earnings. The firm did not carry worker's compensation insurance on the worker. The worker did not have a substantial investment in equipment or facilities used in the work and did not assume the usual business risks of an independent enterprise.

The worker received vacation pay and paid holidays. Either party could terminate the work relationship services at any time without incurring a penalty or liability. The worker was not a member of a union. According to internal research, the worker did not perform similar services for others. She did not advertise her services to the public or maintain an office, shop, or other place of business. According to the worker, the relationship between the parties ended due to COVID-19.

The information submitted on the Form SS-8 and the internal research conducted provided enough information to provide a determination for this case. The facts of the case indicate that the firm had the right to control the worker.

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## Analysis

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.

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.

A continuing relationship between the worker and the person or persons for whom the services are performed indicates that an employer-employee relationship exists. A continuing relationship may exist where work is performed in frequently recurring although irregular intervals.

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.

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

Usually, independent contractors advertise their services and incur expenses for doing so. In this case, the worker not only did not advertise her services, but she filled out an application for the job. This is a strong indicator that the worker is not an independent contractor.

Based on the common-law principles, the firm had the right to direct and control the worker. The worker shall be found to be an employee for Federal tax purposes.

The firm can obtain additional information related to worker classification online at [www.irs.gov](http://www.irs.gov); Publication 4341.