

SS-8 Determination—Determination for Public Inspection

Occupation 05CCP.20 Childcare Provider	Determination: <input checked="" type="checkbox"/> Employee <input type="checkbox"/> Contractor
UILC	Third Party Communication: <input checked="" type="checkbox"/> None <input type="checkbox"/> Yes

Facts of Case

The payer is an individual desiring childcare services in the home. As the payer, you engaged the worker to provide childcare services. You reported the worker's remuneration on Forms 1099-MISC for 2013 and 2014 under the name of your business, [REDACTED].

Information from the parties supports that you provided the worker with instructions and her work assignments. If problems or complaints occurred, the worker contacted you for resolution. She followed a routine part-time schedule and performed her services on your premises. If additional personnel were needed, you were responsible for hiring and compensating them.

You provided the cleaning supplies, arts and crafts for the children, food, strollers, lunch boxes, etc. The worker did not incur expenses in the performance of her services. You paid the worker at an hourly rate. You did not cover her under workers' compensation. Neither party indicated an investment by the worker in a related business, or the risk of the worker incurring a financial loss beyond the normal loss of compensation.

You did not make benefits available to the worker. Both parties reserved the right to terminate the work relationship at any time without incurring a penalty or liability. The worker stated that she did not advertise her services or provide similar services for others during the same time period. She terminated the work relationship with a 2 ½ week notice.

Analysis

Section 31.3121(d)-1(a)(3) of the regulations provides that if the relationship of an employer and employee exists, the designation or description of the parties as anything other than that of employer and employee is immaterial. Thus, if an employer-employee relationship exists, any contractual designation of the employee as a partner, coadventurer, agent, or independent contractor must be disregarded. Therefore, your 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.

Factors that illustrate whether there was a right to control how a worker performed a task include training and instructions. In this case, you were responsible for resolving any problems that may have occurred, showing you retained the right to change the worker's methods and to direct the worker to the extent necessary to protect your financial investment and ensure satisfaction with her work. The worker followed the schedule that you set and performed her services on your premises. 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. The worker was required to perform her services personally, meaning she could not engage and pay others to perform services for you on her behalf. 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. These facts show that you retained behavioral control over the services of the worker.

Factors that illustrate whether there was 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, and therefore, did not have the opportunity to realize a profit or incur a loss as a result of the services provided. "Profit or loss" implies the use of capital by a person in an independent business of his or her own. Lack of significant investment by a person in facilities or equipment used in performing services for another indicates dependence on the employer and, accordingly, the existence of an employer-employee relationship. You paid the worker at an hourly rate. Payment by the hour generally points to an employer-employee relationship. These facts show that you retained control over the financial aspects of the worker's services.

Factors that illustrate how the parties perceived 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 were part of the service recipient's regular business activities. In this case, the worker performed her services on a continuing basis. She was not engaged in an independent enterprise, but rather the childcare services performed by the worker were a necessary and integral part of the care your children received in your home. Integration of the worker's services into the business arrangement generally shows that the worker is subject to direction and control. When the success or continuation of a business arrangement depends to an appreciable degree upon the performance of certain services, the workers who perform those services must necessarily be subject to a certain amount of control by the payer. Although you did not provide benefits to the worker, she terminated the work relationship without incurring a liability. If the worker has the right to end his or her relationship with the person for whom the services are performed at any time he or she wishes without incurring liability, that factor indicates an employer-employee relationship. These facts show that you retained control over the work relationship and services of the worker.

Based on the above analysis, we conclude that you 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.