

SS-8 Determination—Determination for Public Inspection

Occupation

05CCP.25 Childcare Provider

Determination:

☒ Employee

☐ Contractor

UILC

Third Party Communication:

☒ None

☐ Yes

Facts of Case

The payer is a church. The worker was engaged by the church to provide childcare services for its [REDACTED]. The church reported the worker's remuneration on Form 1099-MISC for 2013.

Information from the parties supports that the church trained the worker. It provided her with her work assignments and the methods by which to perform them. If problems occurred, the worker contacted the church for resolution. The worker followed a routine Wednesday night and Sunday morning schedule. She performed her services on the church's premises. The worker was required to perform her services personally.

The church provided all supplies and the property. The worker did not lease space or equipment, or incur expenses in the performance of her services. The church paid the worker at an hourly rate. 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.

The church did not make benefits available to the worker. The worker did not advertise her services or provide similar services for others during the same time period. Both parties reserved the right to terminate the work relationship at any time without incurring a penalty or liability, and in fact, the church terminated the work relationship.

Analysis

Factors that illustrate whether there was a right to control how a worker performed a task include training and instructions. In this case, the church trained the worker. It retained the right to change the worker's methods and to direct the worker to the extent necessary to protect its financial investment. Training a worker indicates that the person or persons for whom the services are performed want the services performed in a particular method or manner. The worker followed the schedule set by the church. She performed her services on the church's 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 the church 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 the church 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. The church paid the worker at an hourly rate. Payment by the hour generally points to an employer-employee relationship. These facts show that the church 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 performed her services under the church's name. The worker was not engaged in an independent enterprise, but rather the childcare services performed by the worker were a necessary and integral part of the church's [REDACTED] mission. Integration of the worker's services into the business operations generally shows that the worker is subject to direction and control. When the success or continuation of a business 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 business. Although the church did not provide benefits to the worker, it terminated the work relationship without incurring a liability. The right to discharge a worker is a factor indicating that the worker is an employee and the person possessing the right is an employer. These facts show that the church retained control over the work relationship and services of the worker.

Based on the above analysis, we conclude that the church 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.