

SS-8 Determination—Determination for Public Inspection

Occupation

05CCP.28 Childcare Provider

Determination:

☒ Employee

☐ Contractor

UILC

Third Party Communication:

☒ None

☐ Yes

Facts of Case

The worker initiated the request for a determination of her work status as a nanny in tax year 2013. The parents/employers engaged her to care for a one-year old child at their personal residence. Her duties included feeding, changing, and engaging in educational activities with the child, in addition to household chores and taking care of the dogs.

The parents' response indicates the worker provided services as a house sitter, dog sitter, and nanny. The parent provided a copy of the issued Form 1099-MISC to reflect her earnings as well as the copy of the [REDACTED] Agreement.

According to the parents, there was no training and instructions provided to the worker. The worker determined the methods to use to perform her duties. The parents were to be contacted if the worker encountered any problem. The services were rendered at the family home. The worker was required to perform the services personally – substitutes and/or helpers were not allowed.

The worker indicated she was given specific one-on-one training and instructions as to the care of child, dogs, and house. She was told of her job assignments/responsibilities the first week; however, but verbal and written changes could be provided. The parents that determined the methods by which the worker's services were performed. The worker was scheduled from 8 a.m. to 4 p.m., Monday through Friday at the family home unless requested to take the child to the library or park. The worker acknowledged she was required to perform the services personally; any additional personnel would be hired and paid by the parents.

The worker and parents concur that the parents provided everything needed for the child and pets. The worker furnished her vehicle for the occasional trip to the library. The parents paid the worker a weekly salary. The worker was not at risk for a financial loss in this work relationship.

Both parties agree that no benefits were extended to the worker. Either party could terminate the work relationship without incurring a liability or penalty. The worker was not performing same or similar services for others during the same time frame.

The worker furnished copies of receipts for services/payment received. The firm and worker provided a copy of the nanny/house and dog care agreement. The principal duties as a caretaker for the child included: feeding and changing, maintaining clean space in the house for the child, engaging in educational and developmental activities with the child, maintaining a daily log of child's activities including but not limited to feeding schedule, sleep schedule; the nanny was to maintain vehicle insurance and registration and valid driver's license; other care taking duties and house work may be requested from time to time; there was no use of electronic devices, no travel with child unless parent notified, no guests at the house, no other care taking responsibilities while serving as care taker for the child; nanny was not to enter an area where there may be other animals coming in contact with the child; and the nanny was reimbursed for all reasonable expenses incurred for the child's entertainment and development, provided such expenses were approved in advance.

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. See, for example, Rev. Rul. 68-598, 1968-2 C.B. 464, and Rev. Rul. 66-381, 1966-2 C.B. 449.

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. See Rev. Rul. 74-389, 1974-2 C.B. 330.

A person who can realize a profit or suffer a loss as a result of his or her services is generally an independent contractor, while the person who cannot is an employee. See Rev. Rul. 70-309, 1970-1 C.B. 199. "Profit or loss" implies the use of capital by a person in an independent business of his or her own. The risk that a worker will not receive payment for his or her services, however, is common to both independent contractors and employees and, thus, does not constitute a sufficient economic risk to support treatment as an independent contractor. If a worker loses payment from the firm's customer for poor work, the firm shares the risk of such loss. Control of the firm over the worker would be necessary in order to reduce the risk of financial loss to the firm. The opportunity for higher earnings or of gain or loss from a commission arrangement is not considered profit or loss.

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.

We have considered the information provided by both parties and have applied the above law to this work relationship. In this case, the parents retained the right to change the worker's methods and to direct the worker to the extent necessary to protect the child. The worker was not operating a separate and distinct business. The worker did not have the opportunity to realize a profit or incur a loss as a result of the services provided. Integration of the worker's services into the family routine generally shows that the worker is subject to direction and control; the services performed by the worker were necessary and integral to the care and well-being of the child.

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

Based on the above analysis, 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 household employee, and not an independent contractor operating a trade or business. For further clarification of household employee issues, please see Publication 926, Household Employer's Tax Guide.