

SS-8 Determination—Determination for Public Inspection

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| Occupation 05CCP.40 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 worker initiated the request for a determination of her work status as a babysitter in the home of the child and payer/parent in tax year 2014.

The payer/parent did respond to the request for information; the response was signed by the father/parent. The parent acknowledged the worker performed services as a babysitter, primarily feeding and changing diapers.

The hours, instructions, and standards were established by the parents as to feeding and nap times for the newborn. The parent responded that the worker determined the methods by which the services were performed; the worker disagreed stating the parents determined the methods by which she performed her duties. Any problems or complaints encountered by the worker were directed to the parents for resolution. The services were rendered in the home of the child and parents. Both parties concurred that the worker was required to perform the services personally.

The parents provided food and diapers; the worker furnished nothing and did not incur expenses in the performance of the job. The parents paid the ; worker an hourly wage. The worker was not at risk for a financial loss in this work relationship.

There were no benefits extended to the worker . Either party could terminate the work relationship without incurring a liability or penalty. The worker was performing same or similar services for others during the same time frame. The work relationship ceased when child became old enough and parents felt comfortable putting him in a daycare.

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. 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. See Rev. Rul. 55-695, 1955-2 C.B. 410.

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.

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.

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 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. In this case, the worker was not engaged in an independent enterprise, but rather the services performed by the worker were a necessary and integral to the care of the child in the family home.

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 common law employee, and not an independent contractor operating a trade or business.

Because the worker's services constituted domestic services, the employer was responsible for withholding the employee's share of the FICA tax if the worker was paid up to a specific income threshold amount. The wage threshold for withholding FICA tax in a specific year and for further clarification of household employee issues may be found in that year's Publication 926, Household Employer's Tax Guide.