

SS-8 Determination—Determination for Public Inspection

| | |
|---|---|
| Occupation 05CCP.47 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 childcare provider to three children in the home of the parents in tax year 2014.

The parent's response was signed by [REDACTED]. The following information as provided on Form SS-8: the worker provided child care; the worker was to perform the services personally; the worker was entitled to paid vacation; and the earnings paid to the worker.

According to the worker, she received her job assignments the night before for the next day. The parents determined the methods by which the worker's services were performed; any problems or complaints encountered by the worker were directed to the parents for resolution. The services were rendered at the family's residence. The worker arrived in the morning, attended to the needs of the youngest child, prepared meals, drove to school to pick up older siblings, attended to the three children after school, including preparation for bed. Sometimes her hours were in excess of 8 hours per day. The worker was required to perform the services personally.

The parents provided the home, food, and craft supplies for activities. The worker furnished nothing; she did not incur expenses in the performance of the job. She indicated that she was reimbursed for gas to take the children to activities. The worker was paid an hourly wage until June when paychecks became a set amount. The worker was not at risk for a financial loss in this work relationship. The parents established the level of payment for the services provided.

There were no benefits 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.

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.

If the work is performed on the premises of the person or persons for whom the services are performed, that factor suggests control over the worker, especially if the work could be done elsewhere.

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.

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. "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.

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 ensure the safety and well-being of the children. 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. Integration of the worker's services into the family routines generally shows that the worker is subject to direction and control.

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 constitute 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 in that particular year. The wage threshold for withholding FICA tax in a specific year may be found in that year's Publication 926, Household Employer's Tax Guide. This publication can be found on www.irs.gov.