

SS-8 Determination—Determination for Public Inspection

Occupation 05CSI Personal Service Providers	Determination: <input checked="" type="checkbox"/> Employee <input type="checkbox"/> Contractor
UILC	Third Party Communication: <input checked="" type="checkbox"/> None <input type="checkbox"/> Yes

I have read Notice 441 and am requesting:

- Additional redactions based on categories listed in section entitled "Deletions We May Have Made to Your Original Determination Letter"
- Delay based on an on-going transaction
- 90 day delay

For IRS Use Only:

Facts of Case

The firm is a individual who required in home care. The firm engaged the worker who was a newly graduated doctor to perform services at the firm's home part-time as needed. The firm provided the worker with instructions on services needed to be performed. The firm assigned the worker schedules bases on the worker's availability and needs of the firm. The firm and worker determined the methods used to perform the services. The firm required the worker to discuss problems or complaints with the firm to resolve problems or complaints. The worker provided documented activity reports on the services performed per the worker and the firm indicated no reports were required. The worker was required to perform the services at the firm's home personally.

The firm provided everything the worker needed to perform the services. The worker provided personal items. The worker did not lease equipment or space. The worker did not incur any significant on-going business related expenses. The firm paid the worker an hourly wage through the firm's resources. The firm did not carry workers' compensation insurance. The firm was not aware of worker's economic loss and financial risk and the worker indicated none could be incurred. The firm and worker mutually agreed verbally to the hourly payment made for the services per the firm.

There were no contracts between the firm and worker. The worker did not receive any paid benefits from the firm. Both parties retained the right to terminate the working relationship at any time without incurring any liability per the worker and the firm indicated the worker was required to complete tasks assigned and could not leave until is job was over for the period of time he was scheduled to be there per the firm. The worker did perform services for others and was not required to obtain the firm's prior approval to do so. The worker uses referrals to advertise his services per the firm, the worker indicated doing no advertising as a business to the public. The relationship ended when the firm told the worker his services were no longer needed.

Analysis

Based on the information provided by both the firm and the worker we have determined the worker to have been a domestic employee.

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. Section 31.3401(c)-1(c) of the regulations states that generally professionals such as physicians, lawyers, dentists, veterinarians, contractors, subcontractors, public stenographers, auctioneers, and others in an independent business or profession in which they offer their services to the public are not employees. However, if a firm has the right to direct and control a professional, he or she is an employee with respect to the services performed under these circumstances.

Often the skill level or location of work of a highly trained professional makes it difficult or impossible for the firm to directly supervise the services so the control over the worker by the firm is more general. Factors such as integration into the firm's organization, the nature of the relationship and the method of pay, and the authority of the firm to require compliance with its policies are the controlling factors. Yet despite this absence of direct control, it cannot be doubted that many professionals are employees.

A private home is a fixed place of abode of an individual or family. Remuneration paid for domestic services is not subject to federal income tax withholding, unless both the employer and employee voluntarily agree to it. See Code section 3401(a)(3). The domestic employee may make a request for income tax withholding by completing Form W-4, "Employee's Withholding Allowance Certificate," and may also request advance payments of the earned income credit by completing Form W-5 if he/she is eligible. However, there are no similar exceptions for FICA and FUTA taxes.

Because the worker's services constitute domestic services, the employer is responsible for withholding the employee's share of the FICA tax if the worker was paid up to a specific income threshold amount in each 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.