

# SS-8 Determination—Determination for Public Inspection

Occupation 05CSI Caregiver	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 an individual payer. The worker was engaged as a caregiver who cooked, cleaned and assisted the payer with his personal needs. The worker received a 2017 Form 1099-MISC for her services as well as a Form 1099-MISC for 2016. There was no written agreement.

Both the payer and the worker agreed that the worker was given directions on how to care for the payer based on his health needs. The worker's work assignment was to report to work during set scheduled hours to assist payer with his needs. The payer, his representative, as well as the worker determined the methods by which the assignments were performed. Both parties agreed that the payer/representative would be contacted if any issues or problems arose. Both agreed that the worker submitted daily work activities into a log. Both also agreed that the worker provided various caregiving activities such as feeding breakfast, going to doctor's appointments, and personal hygiene matters - all at the payer's home. The time may have varied based on the payer's need. There were caregiver meetings. Both agreed that the worker was to provide the services personally with only the payer/representative hiring and paying any substitutes.

The payer provided everything needed for his care. The worker was paid an hourly rate or daily rate based on an eight hour day, and had no other economic risk. Each party indicated that the other established the level of payment for services.

There were no benefits other than a holiday bonus. Either party could terminate the relationship without incurring a liability. The worker did not perform similar services for others. The relationship has ended.

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## Analysis

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In determining whether an individual is an employee or an independent contractor under the common law, all evidence of both control and lack of control or independence must be considered. The relationship of the worker and the business must be examined. Facts that show a right to direct or control how the worker performs the specific tasks for which he or she is hired, who controls the financial aspects of the worker's activities, and how the parties perceive their relationship should be considered. The determination of the worker's status, then, rests on the weight given to the factors, keeping in mind that no one factor rules. The degree of importance of each factor varies depending on the occupation and the circumstances.

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 worker is a household employee if the payer can control not only what work is done, but how it is done. It doesn't matter whether the work is full-time or part-time or that the worker was hired through an agency or from a list provided by an agency or association. It also doesn't matter whether the worker is paid on an hourly, daily, or weekly basis, or by the job.

Factors that illustrate whether there is a right to control how a worker performs a task include training and instructions. In this case, the payer provided instructions and expectations, even if just initially and even if the work became routine. The payer retained the right to change the worker's methods and to direct the worker to the extent necessary to ensure the payer's proper care. The worker's hourly schedule may have been flexible and convenient to both parties; however, if the nature of the occupation makes fixed hours impractical, a requirement that workers be on the job at certain times is an element of control. This would certainly be the case as the worker drove the payer to doctor's appointments and prepared meals. The worker worked in the payer's home on a continuous basis during the time period in question and was required to provide her services personally. All of these elements indicated an employer-employee relationship existed.

Factors that illustrate whether there is 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. The worker received an hourly or daily rate based on eight hours and had no other economic risk other than the loss of that compensation. 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.

Factors that illustrate how the parties perceive 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 are part of the service recipient's regular business activities. In this case, the worker provided services as a domestic worker and caregiver, in and about the payer's home. When doing so, the worker was not engaged in a separate business venture. The payer retained the right to redirect the worker's activities whether or not the payer exercised that right.

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

Please see Publication 926, Household Employers, for guidance and instructions for compliance.