

SS-8 Determination—Determination for Public Inspection

Occupation

05CSI Companion Sitters

Determination:

☒ Employee

☐ Contractor

UILC

Third Party Communication:

☒ None

☐ 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 payer has an Irrevocable Trust to pay the workers for their services. The worker was engaged by the payer as a caregiver and was paid under the payer's trust. There was no written agreement between the two parties.

The worker was instructed to take care of the client. The worker received her assignments from a co-worker/case manager. The worker stated the co-worker determined how the assignments should be performed. The worker was required to submit daily documentation of the services she provided. The worker had a set schedule Monday through Thursday. The worker performed her services at the client's nursing home. The worker stated she was required to attend staff meetings. The worker was required to perform the services personally.

The worker did not provide anything to perform her services. The worker would be reimbursed any personal cost of care of the client. The worker was paid on an hourly basis. The worker agreed to the hourly rate of pay offered by the trust.

The worker stated she received bonuses. Either party could terminate the relationship without incurring a liability. The payer stated the worker performed similar services for others at the same time she performed services for the firm but the worker stated the worker did not perform similar services for others at the same time she performed services for the payer. The relationship ended as the contract ended.

Analysis

As is the case in almost all worker classification cases, some facts point to an employment relationship while other facts indicate independent contractor status. 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.

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. In the instant case, the worker was required to perform her services personally which demonstrated the payer was interested in the methods used as well as the end result. Control was also demonstrated by setting the worker's daily schedule. The fact the worker was required to attend staff meetings which showed control over the worker.

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. In the instant case, the worker was paid hourly according to the amount of hours she performed services which showed financial control over the worker's service.

Lack of significant investment by a person in facilities or equipment used in performing services for another indicates dependence on the employer and, accordingly, the existence of an employer-employee relationship. The term "significant investment" does not include tools, instruments, and clothing commonly provided by employees in their trade; nor does it include education, experience, or training. In the instant case, the worker could not suffer a significant loss as operating their own business as she did not have a significant investment in the service she provided for the payer. This was further demonstrated by the fact the worker was reimbursed any out-of-pocket expenses to care for the payer.

The worker was an employee according to common law. The information provided by both parties showed the worker was instructed on what care to give to the patient. The worker was required to submit daily documentation on what services she performed which showed control over the worker. Control over the worker was also shown by the fact she was required to follow a set schedule. The fact the worker was required to perform her services personally demonstrated the payer was interested in the methods used as well as the end results as an employer. The worker did not have a financial investment in the performance of her services and could not suffer a significant loss. The fact the worker was paid an hourly rate according to the amount of hours she performed her service demonstrated financial control over the worker. The fact the worker was engaged as a caregiver to meet the payers needs showed the worker service was integrated into the care of the payer.

Based on the above analysis, we conclude that the firm 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 go to www.irs.gov for further information.

Firm: Publication 4341
Worker: Notice 989