

SS-8 Determination—Determination for Public Inspection

Occupation

Personal Service Providers

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

This case involves an elderly person (hereafter referred to as the firm/individual), who pays for at-home care in his residence. The worker was engaged to perform services as an at-home caregiver, whose services included light housekeeping, meal preparation, and taking the individual to outings, and medical appointments. The worker status was treated as independent contractor, and a Form 1099-MISC was issued to the worker at year-end to report the monies received for her services as as non-employee compensation.

The firm/individual's supervising caregiver provided the worker with instructions on how to perform the services. Work methods were determined by the supervising caregiver. Work related issues/complaints were reported to the supervising caregiver, and were resolved by the supervising caregiver or the individual's representative (his daughter) for resolution purposes. The worker was required to perform her services personally, following a set schedule and routine. The worker's services were performed in the individual's home and in the community. The worker was required to keep detailed daily logs of activity, medications administered, and any medical concerns.

All equipment, tools, and supplies were provided for the worker's use. The worker did not provide any items. She incurred minimal expenses. The worker was paid on an hourly wage basis for her services. The worker did not incur economic loss or financial risks related to the services she performed. The worker was not covered under workers' compensation insurance. Employment benefits were not made available to the worker. The worker performed similar services for others, and did not need approval to do so. There was no information provided to support that the worker advertised her services to the public, or that she established her own caregiver business.

Analysis

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.

Nurses' aides and other unlicensed individuals normally perform services that are expected of maids and servants. Such services include bathing the individual, combing his/her hair, reading to the individual, arranging bedding and clothing, and preparing meals. These services are also considered domestic services.

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