

# SS-8 Determination—Determination for Public Inspection

Occupation 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

In this case, the firm is an individual payer requiring caregiver services. The worker was engaged to provide those services. She received a 2017 1099-MISC for her services. There was no written agreement.

The worker noted that individuals, acting on behalf of the payer, provided instructions, assigned the work, determined the methods by which the assignments were performed, and would be contacted if any issues arose. These individuals indicated that there was no specific training and that the worker was asked to furnish caregiver credentials. The parties agreed that the worker submitted notes of shift activities in a logbook. The worker worked part-time during set scheduled hours and days. She made sure that the payer was safe in her daily endeavors. The worker cooked for her, went hiking with her and grocery shopping along with other activities. All of the worker's services were performed at the payer's home. There were team meetings with other caregivers. All agreed that the worker was required to provide the services personally.

The payer provided food, meals, any fees for activities, etc. that were needed by the worker to provide care for the payer. The worker incurred fuel expenses; she would be reimbursed for any other expenses incurred on behalf of the payer. The parties agreed that the worker was paid an hourly rate and had no other economic risk. The worker did not establish the level of payment for services.

All agreed that there were no benefits and that either party could terminate the relationship without incurring a liability. The worker did perform similar services for others. The relationship ended when the worker's services were no longer needed.

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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 this case, individuals, acting on the payer's behalf, provided instructions and expectations, even if just initially. The work may have become part of a daily routine; however, the payer retained the right to redirect the worker's activities as needed to ensure the payer's care, whether or not that right was exercised. The worker's services were performed in the payer's home with the payer providing all needed materials and supplies. The worker worked set scheduled hours for an hourly rate of pay and had no other economic risk.

In this case, many elements of control existed. The establishment of set hours of work by the person or persons for whom the services are performed is a factor indicating control as well as the continuous nature of the worker's services. While the worker's services were for a brief period of time, those services were continuous. A continuing relationship between the worker and the person or persons for whom the services are performed indicates that an employer-employee relationship exists. A continuing relationship may exist where work is performed in frequently recurring although irregular intervals. Payment by the hour and reimbursement of expenses were also both indicators of an employer-employee relationship.

The worker was a caregiver working in the payer's home providing a variety of services and ensuring the safety of the patient. She was essentially a domestic worker. She prepared meals, cleaned, took payer shopping and to appointments. 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.

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.

For further clarification of household employee issues, please see Publication 926, Household Employer's Tax Guide.