

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**

It is our usual practice in cases of this type to solicit information from both parties involved. After the worker's initial filing of the Form SS-8, Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding, we requested information from the payer concerning this work relationship. The payer provided information in regard to this work relationship by completing Form SS-8.

From the information provided the payer's mother-in-law was in need of an individual for care giving services on an as needed basis. The payer believes the worker was an independent contractor while performing services for them as she was only used from time to time to assist the needs of her mother-in-law and the worker would tell them what days she could perform services. The payer reported the worker's 2018 earnings on a Form 1099-MISC.

The payer states they provided no training or instructions to the worker. The worker assisted the payer's mother-in-law with activities of daily living as requested by her mother in law. The payer states the worker determined how she performed her services. The worker was required to notify the payer if any problems arose for their resolution. The worker was not required to submit reports to the payer or attend meetings. The worker performed her services at the payer's home on an as needed basis or drove their mother-in-law to appointments. The hiring and paying of substitutes or helpers did not apply in this case.

The payer states they provided no supplies, equipment or materials to the worker in order to perform her services. The worker provided her own vehicle and the payer states the worker incurred expenses for fuel for this vehicle and they reimbursed the worker for gas and mileage. The payer compensated the worker at an hourly rate and the payer states the worker established the level of payment for the services provided. The worker did not have an investment in a business related to services performed and therefore, did not have an opportunity to incur a loss as a result of her services. The worker was not eligible for employee benefits. The payer states the worker performed similar services for others but did not advertise her services. Either party could terminate the work relationship at any time without incurring a liability.

The payer provided a copy of Form W-9 signed by the worker on August 16, 2018 certifying her Social Security Number (SSN).

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.

Evidence of control generally falls into three categories: behavioral control, financial control, and relationship of the parties, which are collectively referred to as the categories of evidence. In weighing the evidence, careful consideration has been given to the factors outlined below.

Factors that illustrate whether there is a right to control how a worker performs a task include training and instructions. In this case, the worker did not require training or detailed instructions from the payer. The need to direct and control a worker and her services should not be confused with the right to direct and control. The worker did not provide her services as a business entity but rather as an individual providing services as a household employee. A worker is a household employee if they are hired to do household work in personal residence. The worker is an employee if the payer can control not only what work is done, but how it is done. It does not matter whether the work is performed on a full time or part time basis or hired through an agency or from a list provided by an agency or association. Household work is work done in or around a personal home by the following people.

Babysitters
Caretakers
Cleaning people
Domestic workers
Drivers
Health aides
Housekeepers
Maids
Nannies
Private nurses
Yard workers

The payer retained the right to direct and control the worker and her services in order to protect the health and safety of their loved one.

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.

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 was not engaged in an independent enterprise. Both parties retained the right to terminate the work relationship at any time without incurring a liability.

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 more information concerning household employees, please see Publication 926, Household Employers Guide.