

**SS-8 Determination—Determination for Public Inspection**

Occupation

05CSI.23 Companion Sitter

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**

Information provided indicated the "firm" is a private individual who required in home healthcare services. The worker had been retained to provide caregiver services in the home. The firm reported income paid to her caregivers on Form 1099-MISC for tax years 2011-2014. The firm provided a copy of the contract agreement, W-9 and the workers resume'.

The firm indicated no formal training was given as the worker had prior experience. An orientation of the work environment was provided prior to work start. No specific work assignments were given. Any problems or issues were directed to her son. Daily journals were kept, of all care given. The worker performed services on the days agreed upon, when hired. Services were to be performed personally. The firm hired and paid all workers. The worker was paid by the hour. Either party could terminate the work relationship without incurring a penalty or liability. The worker expressed an interest in leaving the area so the contract was terminated by mutual agreement.

The worker indicated she was trained by one of her co-workers with regards to how to care for the individual. Both the individual and her son gave instruction on how to perform the work. Instructions were given via notes and phone calls with the son as to what was required. She agreed everything performed was written down. Services were to be performed personally. The individual's son hired and paid all workers. The family provided all supplies required for the individuals care. She agreed she was paid by the hour. Either party could terminate the work relationship without incurring a penalty or liability. She indicated she was fired when the family found out she gave another worker the SS-8 information.

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.

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## Analysis

Your statement that the worker was an independent contractor pursuant to an agreement is without merit. For federal employment tax purposes, it is the actual working relationship that is controlling and not the terms of an agreement/ contract between the parties

We have applied the above law to the information submitted. 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 way for the payer to control how, and when, a worker performs a task include learning duties /procedures (from another caregiver) and scheduled work shifts. In this case, the family's representative retained the rights to change the worker's methods for providing the services, if necessary, and to vary the worker's shift hours, if necessary, to provide effective and comfortable care for the payer.

Factors that illustrate whether there is a right to direct and control the financial aspects of the worker's activities include significant investment by the worker, the method of payment, and the worker's opportunity for profit or loss. The worker provided only her labor. In this case, the hourly paid worker had no financial investment in the work activities, and could not experience a profit or incur a loss due to the services she provided.

Factors that illustrate the relationship of the parties include the provision of, or lack of employee benefits; the right of the parties to terminate the relationship; the permanency of the relationship; the worker's advertising activities, and whether the worker's services were an integral and necessary part of the payer's ongoing needs. The worker received no employee benefits from the payer. Additionally, the worker did not advertise her services in business directories or other media and did not distribute business cards during the work relationship as independent contractors routinely do. In this case, the services provided by the worker during a continuing relationship were a necessary and integral part of the "care plan" arranged for the payer.

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 household employee (described in IRS Publication 926), and not an independent contractor.