

SS-8 Determination—Determination for Public Inspection

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| Occupation 05CSI.24 Companion Sitter | 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

The firm is operating a home care provider business. The firm engaged the worker through an application process to perform companion sitting services for the firm's business operation. The firm did not provide the worker with any formal training due to the worker's prior experience. The firm assigned the worker services to perform based on the firm's business needs. The firm, firm's clients, and worker determined the methods used to perform the services. The firm required the worker to contact the firm regarding any problems or complaints for resolution. The worker provided daily activity reports on services performed which remained at the client's homes. The worker's daily schedules varied based on the client's needs. The firm required the worker to perform the services personally at the assigned client's homes. The firm hired and paid substitutes or helpers if needed.

The firm provided gloves and hand sanitizer. The worker provided gloves, sanitizer, scrubs, cell phone, and a personal vehicle. The firm's client provided personal items. The worker did not lease equipment or space. The worker incurred expenses for personal items. The firm did not reimburse the worker for any expenses. The firm paid the worker an hourly wage and the customers paid the firm and the worker per the firm. The worker indicated the customers paid the firm. The firm did not carry workers' compensation insurance. The firm determined the level of payment for the services. The worker could not suffer any economic loss and had no financial risk.

There were no contracts between the firm and the worker. The worker indicated there were verbal agreements. The worker did perform similar services for others and was not required to obtain the firm's prior approval to do so per the firm. The worker indicated the firm's prior approval was required. The worker did not advertise as a business to the public. The firm referred to the worker as an associate of the firm's business to the customers. Both the firm and the worker retained the right to terminate the working relationship at any time without incurring any liability.

Analysis

When a firm determines or retains the right to determine directly or through designation what, how, when, and where workers perform services an employer/employee relationship exists. For federal employment tax purposes, it is not necessary for firms to exert direct or continuous control nor that services be performed full-time on a fixed scheduled basis, it is sufficient that the firm retains the right to change the workers services, as they deem necessary for business purposes. In this case the firm engaged the worker through an application process to perform companion sitting services for the firm's clients. No formal training was needed due to the worker's prior experience and qualifications. The firm assigned the worker services to perform based on the firm's business needs. The firm, client, and worker determined the methods used to perform the services. The methods used by workers to perform services are not only controlled through verbal instructions but also by equipment, materials, and supplies provided. The firm required the worker to contact the firm regarding resolution to any problems or complaints. The firm required the worker to complete daily activity reports on the services performed and leave them at the clients homes. The firm required the worker to perform the services personally at the clients homes. The firm hired and paid substitutes or helpers if needed. These facts evidence behavioral control by the firm over the services performed by the worker.

The firm provided the clients, gloves, and sanitizer. The worker provided gloves, sanitizer, scrubs, cell phone, and a personal vehicle. The clients provided personal items. The worker did not lease equipment or space. The worker did not incur any significant on-going business expenses. The firm did not reimburse any expenses. The firm paid the worker an hourly wage and the clients paid the firm directly or indirectly through the worker. If the worker was paid the entire amount was turned over to the firm. The firm determined the level of payment for the services. The worker could not suffer any economic loss due to on-going significant business capital outlays being made. The worker did not have control over profits made nor the risk of losses being incurred with regard to the performance of the services for the firm's business operation. These facts evidence financial control by the firm over the services performed by the worker.

There were no contracts between the firm and the worker. There were verbal working relationship agreements per the worker. It is noted that whether there is an employment relationship is a question of fact based on the autonomy of the work relationship and is not subject to negotiation between the parties. The worker did perform similar services for others while performing services for the firm. Although this could be an important factor to consider in an independent contractor relationship, this factor alone would not make the worker to be an independent contractor. Many workers have more than one job at a time and may be an employee in one or all working relationships depending on the autonomy of each one. The worker did no advertising to the public as being engaged in a business operation. The worker personally performed services for the firm's clients on a regular and continuous variable scheduled basis under the firm's business name over several months.

Both the firm and the worker retained the right to terminate the working relationship at any time without incurring any liability. The right to discharge a worker at any time without incurring a liability for termination is a factor indicating that the worker is an employee and the person possessing the right is an employer. An employer exercises control through the threat of dismissal, which causes the worker to obey the employer's instructions. An independent contractor, on the other hand, cannot be fired without a liability so long as the independent contractor produces a result that meets the contract specifications. Likewise, if the worker has the right to end his or her relationship with the person for whom the services are performed at any time he or she wishes without incurring liability, that factor indicates an employer-employee relationship.