

SS-8 Determination—Determination for Public Inspection

Occupation 05CSI.28 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 payer is an individual desiring personal care services for his wife in their home. As the payer, you engaged the worker to perform the desired services. You did not withhold taxes from the worker's remuneration in 2014 and 2015. It appears that in 2016, you began withholding taxes.

Information from the parties supports that you rely upon the worker's prior training and experience to perform her services. The worker performs her services according to your expectations and doctors' instructions. If problems or complaints occur, the worker contacts you for resolution. The worker follows a routine schedule and adjusts her daily tasks according to your wife's needs. If a substitute is needed, the worker is responsible for arranging her own relief with her co-workers; you are responsible for compensating them.

You provide the supplies, materials, equipment, and the property. The worker does not incur expenses in the performance of her services. You pay the worker at an hourly rate that you determine. You cover her under workers' compensation. Neither party indicated an investment by the worker in a related business, or the risk of the worker incurring a financial loss beyond the normal loss of compensation.

You do not make benefits available to the worker. Both parties reserve the right to terminate the work relationship at any time without incurring a penalty or liability. The worker stated that she does not advertise her services or provide similar services for others at this time.

Analysis

Factors that illustrate whether there is a right to control how a worker performs a task include training and instructions. In this case, while you rely upon the worker's prior training and experience to perform her services, you retain the right to change the worker's methods and to direct the worker to the extent necessary to protect your financial investment and ensure your satisfaction with her work. The worker adjusts her daily tasks according to your wife's needs and expectations. She performs her services in your home. A worker who is required to comply with another person's instructions about when, where, and how he or she is to work is ordinarily an employee. There is no indication that the worker can engage and pay others to perform services for you on her behalf. If the services must be rendered personally, presumably the person or persons for whom the services are performed are interested in the methods used to accomplish the work as well as in the results. These facts show that you retain behavioral control over the services of the worker.

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, does not have the opportunity to realize a profit or incur a loss as a result of the services she provides. "Profit or loss" implies the use of capital by a person in an independent business of his or her own. Lack of significant investment by a person in facilities or equipment used in performing services for another indicates dependence on the employer and, accordingly, the existence of an employer-employee relationship. You pay the worker at an hourly rate. Payment by the hour generally points to an employer-employee relationship. These facts show that you retain control over the financial aspects of the worker's services.

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 performs her services on a continuing basis. She is not engaged in an independent enterprise, but rather the care giving services performed by the worker are a necessary and integral part of the care your wife receives in your home. Integration of the worker's services into the business arrangement generally shows that the worker is subject to direction and control. When the success or continuation of a business arrangement depends to an appreciable degree upon the performance of certain services, the workers who perform those services must necessarily be subject to a certain amount of control by the payer. These facts show that you retain control over the work relationship and services of the worker.

Based on the above analysis, we conclude that you have the right to exercise direction and control over the worker to the degree necessary to establish that the worker is a common law employee for the entire work relationship, and not an independent contractor operating a trade or business.