

SS-8 Determination—Determination for Public Inspection

Occupation 05CSI.30 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 worker requested a determination of employment status for services performed for the payer in 2013 and 2014 as a caregiver. The payer responded to our request for information as follows:

The worker had a job at the payer's doctor's office and they inquired about a caregiver and the worker stated she did that as a side job. The worker performed some light housekeeping and provided baby-sitting for the payer and his disabled daughter. The payer believes the worker was paid correctly as an independent contractor because she did the work unsupervised and at her own discretion. She needed no training. The worker also agreed to pay her own taxes. The worker was not given any instructions. She determined her own methods but reported to the payer's wife, [REDACTED], with problems. The worker personally performed her services following a regular part-time schedule. Everything the worker needed was provided by the payer. The worker incurred no expenses. She received a salary. Either party could have terminated without liability. The worker had cards made up with her name stating she was a caregiver.

Analysis

Rev. Rul. 71-389, 1971-2 C.B. 341, provides guidance in determining whether certain types of services performed in private homes of employers are 'domestic service' for purposes of the FICA, the FUTA, and income tax withholding. This revenue ruling states, in pertinent part, that the terms 'domestic service in a private home' and 'domestic service in a private home of the employer' are described in the regulations as service of a household nature performed by an employee in or about the private home of the person by whom he is employed. Services of this type include babysitters, maids, housekeepers, and the like.

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.

Although you and the worker agreed that she would pay her own taxes, for federal employment tax purposes, it is the actual working relationship that is controlling and not the terms of the contract (oral or written) between the parties.

The worker personally performed her services in your home as a caregiver. As stated above, these services are considered domestic services and the worker is determined to have been your employee.

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