

## SS-8 Determination—Determination for Public Inspection

Occupation

05CSI.33 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

The payer is an individual desiring personal care services in her home. As the payer, you engaged the worker to provide services as a caregiver on a substitute basis, as needed. You reported the worker's remuneration on Forms 1099-MISC for 2014 and 2015.

Information from the parties supports that the firm relied upon the worker's prior training and experience to perform her services. The worker coordinated her schedule and work assignments with your other caregivers. If problems or complaints occurred, the worker contacted your son for resolution. The worker performed her services in the your home. She was required to perform her services personally. If additional personnel were needed, you and your son were responsible for hiring and compensating them.

You provided all supplies, equipment, materials, and the property. The worker did not incur expenses in the performance of her services. You paid the worker at an hourly rate that you and your son set. You did not cover the worker 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 did not make benefits available to the worker. The worker stated that she did not advertise her services or provide similar services for others during the same time period. Both parties reserved the right to terminate the work relationship at any time without incurring a penalty or liability, and in fact, the worker terminated the work relationship.

---

## Analysis

Factors that illustrate whether there was a right to control how a worker performed a task include training and instructions. In this case, you relied upon the worker's prior training and experience to perform her services. Some employees may work without receiving instructions because they are highly proficient and conscientious workers or because the duties are so simple or familiar to them. Furthermore, the instructions, that show how to reach the desired results, may have been oral and given only once at the beginning of the relationship. You retained the right to change the worker's methods and to direct the worker to the extent necessary to protect your financial investment and ensure that you were satisfied with her work. The statement that the worker performed services on an as-needed basis and was therefore, an independent contractor, is without merit as both employees and independent contractors can perform services when the needs of a business arrangement warrants. The worker was required to perform her services personally, meaning she could not 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 retained behavioral control over the services of the worker.

Factors that illustrate whether there was 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. "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 paid the worker at an hourly rate. Payment by the hour generally points to an employer-employee relationship. These facts show that you retained control over the financial aspects of the worker's services.

Factors that illustrate how the parties perceived 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 were part of the service recipient's regular business activities. In this case, the worker performed her services on a continuing basis. A continuing relationship between the worker and the person or persons for whom the services are performed indicates that an employer-employee relationship exists. A continuing relationship may exist where work is performed in frequently recurring although irregular intervals. The worker was not engaged in an independent enterprise, but rather the personal care services performed by the worker were a necessary and integral part of the care the payer received in her 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. Although you did not provide benefits to the worker, she terminated the work relationship without incurring a liability. 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. These facts show that you retained control over the work relationship and services of the worker.

Based on the above analysis, we conclude that you 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.