

SS-8 Determination—Determination for Public Inspection

Occupation

05CSI.39 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 firm is a referral agency for clients/families who need care giving services in the home. The firm keeps a pool of caregivers, and refers caregivers to the clients/families for interviews. The clients/families then decide, after a trial period, whether or not to continue to use the referred caregiver. The worker in this case was engaged by the firm to perform services as a caregiver, whose services included non-medical care such as personal hygiene, light housekeeping, meal preparation, and companion services. The firm treated the worker status as independent contractor, and issued to her a Form 1099-MISC at year-end to report the monies received for her services as non-employee compensation.

The worker received her work assignments through the firm. Instructions on what needed to be done were provided to the firm by the client/family. The worker determined the work methods by which to perform her services. The firm required the worker to perform her services personally, at the client/family residence. Problems were reported to the client/families, and to the firm for resolution purposes.

The client/family provided the equipment, tools, and supplies needed to perform the services. The worker did not incur work related expenses. There was no information provided to support that the worker incurred economic loss or financial risks related to the services she performed. The firm paid the worker a daily rate for her services, that included housing and food allowance. Clients/families made payment to the firm for services performed.

The firm did not carry workers' compensation insurance on the worker. Employment benefits were not made available to the worker. There was no information provided for this case to support that the worker performed similar services for hers, or that she advertised as being in business to perform similar services for others. The work relationship was continuous as opposed to a one-time transaction, and both parties retained the right to terminate the work relationship at any time without incurring liabilities.

Analysis

The facts provided for this case do not evidence the worker's behavioral control of the work relationship. The worker followed the instructions given to her by the firm through its client. The worker performed her services personally, at the client's location, and represented the firm's business in the performance of her services. As a result, the firm retained the right to direct and control the worker to the extent necessary to protect its investment, and the reputation of its business operations.

The facts provided for this case do not evidence the worker's financial control of the work relationship. The worker's remuneration was established by the firm. The worker had no opportunity for profit or loss as a result of the services performed for the firm. "Profit or loss" implies the use of capital by a person in an independent business of his or her own. The worker did not have a significant investment in the facilities, equipment, tools, or supplies used to perform her services for the firm. The term "significant investment" does not include tools, instruments, and clothing commonly provided by employees in their trade; nor does it include education, experience, or training. Also, if the firm has the right to control the equipment, it is unlikely the worker had an investment in facilities.

The worker performed services as requested by the firm, for an indefinite period of time, and both parties retained the right to terminate the work relationship at any time without incurring liabilities. The facts provided for this case do not evidence that the worker was engaged in an independent enterprise, but rather show that she performed her services as a necessary and integral part of the firm's business operations. Integration of the worker's services into the business operations generally shows that the worker is subject to direction and control. When the success or continuation of a business 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 owner of the business.

Based on common law principles, the worker shall be found to be an employee for Federal employment tax purposes. For correction assistance, you may refer to Publication 4341, which can be obtained at www.irs.gov