

SS-8 Determination—Determination for Public Inspection

Occupation 05CSI.41 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 requiring personal care services in his home. As the payer, you engaged the worker as a caregiver. You did not withhold taxes from the worker's remuneration in 2014, 2015, and 2016.

It is our usual practice in cases of this type to solicit information from both parties involved. You provided a statement describing your needs, but did not provide details of the work relationship. Any other conditions that were not known or furnished may change this determination.

Information from the worker supports that you provided the worker with his work assignments and the methods by which to perform them. If problems or complaints occurred, the worker contacted you for resolution. The worker maintained a daily log/notebook. He followed a routine schedule and performed his services in your home. The worker was required to perform his services personally. If additional personnel were needed, you were responsible for hiring and compensating them.

You provided the property, supplies, equipment, and materials. The worker did not incur expenses in the performance of his services. You paid the worker at an hourly rate. You did not cover him under workers' compensation. The worker did not indicate an investment in a related business, or the risk of incurring a financial loss beyond the normal loss of compensation.

You did not make benefits available to the worker. There is no evidence presented that the worker advertised his services or maintained a business listing. Both parties reserved the right to terminate the work relationship at any time without incurring a penalty or liability, and in fact, you 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 provided the worker with his work assignments and instructed him on the methods by which to perform them. You retained the right to change the worker's methods and to direct the worker to the extent necessary to ensure that you were satisfied with the services provided. The worker performed his services in your home and on a regular schedule. 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. This is true even if the training was only given once at the beginning of the work relationship. The worker was required to perform his services personally, meaning he could not engage and pay others to perform services for you on his 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 his services on a continuing basis. He was not engaged in an independent enterprise, but rather the services performed by the worker were a necessary and integral part of the care you received 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. Although you did not provide benefits to the worker, you terminated the work relationship without incurring a liability. The right to discharge a worker is a factor indicating that the worker is an employee and the person possessing the right is an employer. 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.