

SS-8 Determination—Determination for Public Inspection

Occupation

05PCP Caregiver

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 an elderly, disabled individual who needed assistance with domestic services. The worker was engaged as an assistant/caregiver, to perform domestic services (cooking, cleaning, laundry, running personal errands), and other tasks as assigned. The firm issued to the worker a Form 1099-MISC at year-end to report the monies received for her services as non-employee compensation.

At the onset of the work relationship, the firm provided general guidelines as to what services were needed. The firm provided the worker with a daily list of tasks she wanted to have done, and the worker chose which assignments she would perform each day. The worker determined the work methods by which to perform the services. Problems the worker encountered were mutually resolved, with the firm having final say. The worker performed her services personally, at the firm's residence.

The firm provided the worker with the equipment, tools, and supplies needed to perform her services. The worker incurred expenses related to errands. The firm paid the worker on an hourly wage basis for her services. The worker did not incur economic loss or financial risks related to the services she performed for the firm.

The worker was not covered under workers' compensation insurance. Employment benefits were not made available to the worker. The worker did not perform similar services for others, and did not advertise as being available to perform similar services to the public. The work relationship was continuous, and could have been terminated by either party at any time without incurring liabilities.

Analysis

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.

Remuneration paid for domestic services is not subject to federal income tax withholding, unless both the employer and employee voluntarily agree to it. See Code section 3401(a)(3). The domestic employee may make a request for income tax withholding by completing Form W-4, "Employee's Withholding Allowance Certificate," and may also request advance payments of the earned income credit by completing Form W-5 if he/she is eligible. However, there are no similar exceptions for FICA and FUTA taxes.

Because the worker's services constitute domestic services, the employer is responsible for withholding the employee's share of the FICA tax if the worker was paid up to a specific income threshold amount in each particular year. The wage threshold for withholding FICA tax in a specific year may be found in that year's Publication 926, Household Employer's Tax Guide