

SS-8 Determination—Determination for Public Inspection

Occupation

05PCP Personal Care Attendant

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

Information provided indicated the firm is an individual who required nursing care in the home. The worker had been referred to the firm from another party. The worker was interviewed and obtained the position. The firm's daughter and POA, explained they would be issuing Form 1099-MISC at year end and the hourly wage was then agreed upon. The firm provided a copy of the e-mails where the worker reported the hours worked, and a copy of the ledger of payments made. The firm indicated the third party set the monthly schedule for the worker, although she was not an employee of that firm. General duties, nutrition plans and medication disbursement instructions were given. The work schedule varied, to accommodate the worker. The firm's daughter indicated she was paid by the hour.

The worker indicated she was instructed what to do on a daily basis. It was mostly care of the individual, bathing, housework, meal prep, and medication etc. All work was performed in the individuals home. She agreed she was paid by the hour.

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 or nannies, 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.

Remuneration paid in any medium other than cash to an employee for domestic services in the private home of the employer, or for his/her personal wants and comforts, and not in the course of the employer's trade or business is not subject to FICA (Code section 3121(a)(7)(A)). Domestic service performed by your spouse or by your child (under age 21) is not treated as employment subject to FICA. With some exceptions, domestic service performed by your parent or by an individual under age 18 at any time during the year, will also not be treated as employment subject to FICA if it is not the principal occupation of such employee.

If you paid cash wages of \$1000 or more for domestic services during any calendar quarter in the calendar year or the preceding calendar year, then those wages are subject to FUTA tax (Code sections 3306(a)(3) and 3306(c)(2)). Generally, you can take a credit against the FUTA tax for a contribution paid into state unemployment funds, although this credit cannot exceed 5.4 percent of the first \$7000 of wages.

The FUTA requirements are based on the total wages paid to all domestic employees, while the FICA wage threshold is based on the wages paid to each domestic employee. Therefore, an employer may be liable for FUTA tax, while not liable for FICA tax.

Domestic employers are required to satisfy their tax obligations by increasing their quarterly estimated tax payments or by increasing tax withholding from their own wages. This requirement became effective in 1998. Estimated tax penalties apply to underpayments attributable to these taxes.

Therefore, we conclude that as the employer of the worker, you are liable for FICA and FUTA taxes for the worker, subject to the preceding thresholds. If you choose to pay your employee's share of social security and Medicare taxes in lieu of withholding it from the employee's wages, the amount must be added to the employee's wages for income tax purposes. However, it is not included as social security, Medicare, or FUTA wages.

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