

SS-8 Determination—Determination for Public Inspection

Occupation 05PCP.21 Personal Care Worker	Determination: <input checked="" type="checkbox"/> Employee <input type="checkbox"/> Contractor
UILC	Third Party Communication: <input checked="" type="checkbox"/> None <input type="checkbox"/> Yes

Facts of Case

The worker requested a determination of employment status for services performed for the firm in 2013 and 2014 as a live-in caregiver. The payer responded by POA to our request for information.

The payer was in need of a live-in caregiver to provide care due to illness. The worker was engaged for this purpose. Per the unsigned contract the worker was to provide 3 meals a day and fluids according to a diet set-up, manage and serve prescriptions, provide housekeeping and laundry service, shopping, transport or arrange transport to medical appointments, personal care as needed, plan activities and socialization, and to be on call. The worker was to have 2 days off per week and 2 weeks vacation. She would receive a monthly amount, a room, closet, private bath,, and private entrance. The worker was allowed to use the kitchen, washer and dryer, phone and internet.

The firm stated the worker was contracted to provide services to care for an elderly person that needed 24 hour in home care. Her finances were limited and she could not be left alone for long periods. The doctors gave instructions for her care and she received other training and instructions as needed. The doctor determined the methods for the medical issues. The POA and the worker worked together on any other issues. The worker lived in an efficiency apartment at the patient's home and was required to personally perform the services. The payer provided what was needed. The worker received a salary and was paid bimonthly. She received benefits and either party could have terminated without incurring a liability.

Analysis

We have applied the above law to the information submitted. The determination of the worker's status rests on the weight given to the factors, keeping in mind that no one factor rules. The degree of importance of each factor varies depending on the occupation and the circumstances. Evidence of control generally falls into three categories: behavioral control, financial control, and relationship of the parties, which are collectively referred to as the categories of evidence. In weighing the evidence, careful consideration has been given to the factors outlined below. Your statement that the worker was an independent contractor pursuant to an agreement is without merit. For federal employment tax purposes, it is the actual working relationship that is controlling and not the terms of the contract (oral or written) between the parties.

Factors that illustrate whether there is a right to control how a worker performs a task include training and instructions. In this case, you retained the right to change the worker's methods and to direct the worker to the extent necessary to protect the client. 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 control factor is present if the person or persons for whom the services are performed have the right to require compliance with instructions. 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. The worker received her assignments from you and reported to you when problems occurred. You determined the worker's methods.

Factors that illustrate whether there is 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. Everything was provided and the worker lived in the payer's home.

Based on the above analysis, we conclude that the payer 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.

Payer: please go to www.irs.gov for further information. Search household employees.