

SS-8 Determination—Determination for Public Inspection

Occupation

05PCP.23 Personal Care Worker

Determination:

☒ Employee

☐ Contractor

UILC

Third Party Communication:

☒ None

☐ Yes

Facts of Case

It is our usual practice in cases of this type to solicit information from both parties involved. Upon the submission of the Form SS-8 from the worker, we requested information from the payer concerning this work relationship. The payer responded to our request for completion of Form SS-8.

From the information provided the payer engaged the worker under a verbal agreement to temporarily care for her father. The worker was required to personally perform her services and she performed her services at the payer's personal residence. The worker received her daily assignments from the payer and the worker was required to notify the payer if any problems arose while performing services. The payer paid the worker on an hourly basis and the payer reported the worker's 2012 earnings on a Form 1099-MISC. The payer did not withhold employment taxes from the worker's 2013 earnings.

The payer provided all equipment, supplies, and materials to the worker in order to perform her services. The worker incurred fuel expenses for her vehicle while running errands for the payer. The worker did not perform similar services for others and she did not advertise her services. The worker was not eligible for employee benefits. Either party could terminate the work relationship at any time without either party incurring a liability.

Analysis

As is the case in almost all worker classification cases, some facts point to an employment relationship while other facts indicate independent contractor status. The determination of the worker's status, then, 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.

Factors that illustrate whether there is a right to control how a worker performs a task include training and instructions. In this case, the worker was not engaged in an independent enterprise but performed caregiver in the payer's personal home. A worker or individual who opens up a care giving facility or provides these services exclusively out of their own home providing services to the general public is operating his or her own business. This type of business requires capital for equipment, supplies, licensing, insurance, rent, and other items. However, this was not what took place in this case. There was no evidence presented or found in this investigation that the worker was in the business of providing care giving services to the public out of her own home or a facility set up for this purpose. While the worker did not require training, this in and of itself does not determine the worker's status. Some workers 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 payer retained the right to direct and control the worker and her services to insure the health and safety of her father.

The payer's statement that the worker performed services on a temporary basis and therefore, an independent contractor is without merit. A continuing relationship was established rather than a one-time transaction taking place. A continuing relationship may exist where work is performed in frequently recurring although irregular intervals. The existence of a continuing relationship indicates an employer/employee relationship was established.

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.

Factors that illustrate how the parties perceive 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 are part of the service recipient's regular business activities. In this case, the worker was not engaged in an independent enterprise. Both parties retained the right to terminate the work relationship at any time without incurring a liability.

A worker is a household employee if they are hired to do household work in personal residence. The worker is an employee if the payer can control not only what work is done, but how it is done. It does not matter whether the work is performed on a full time or part time basis or hired through an agency or from a list provided by an agency or association. It also does not matter whether the worker is paid on an hourly, daily, or weekly basis, or by the job.

Household work is work done in or around a personal home by the following people.

Babysitters
Caretakers
Cleaning people
Domestic workers
Drivers
Health aides
Housekeepers
Maids
Nannies
Private nurses
Yard workers

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.