

SS-8 Determination—Determination for Public Inspection

Occupation 05PCP.29 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

This case involves an elderly individual needing around the clock care. The individual's son is in charge of the individual's care and finances. He engages persons to provide the necessary care at the individual's residence. The worker in this case was engaged to perform services as an in-home caregiver. Her duties included cooking, cleaning, shopping, housekeeping, bathing, companion care, and night care. The worker status was treated as independent contractor, and the worker was issued a Form 1099-MISC at year-end to report the monies received for her services as non-employee compensation.

Work assignments were based on the needs of the individual and varied weekly. Basic instructions were given to the worker. The individual, along with her son, determined the work methods by which to perform the services. The individual's son resolved problems and complaints encountered in the performance of the worker's services. The worker performed her services personally, at the individual's residence, and other locations as needed. Receipts were turned over to the son regarding items purchased for the individual. All caregivers kept a notebook to document the individual's progress and what was done to assist her. Helpers were engaged by the son, and were paid by the individual for their services.

All items needed to perform the services were provided for the worker's use. Expenses were incurred for the purchase of items for the individual. The worker was reimbursed for expenses related to those items purchased for the individual. The worker was paid a weekly salary for her services. There was no information provided in this case to evidence that the worker incurred economic loss or financial risk with regard to the services she performed for the individual.

No workers' compensation insurance was carried on the worker. Employment benefits were not made available to the worker. There was no information provided in this case to evidence that the worker performed similar services for others, or that she advertised herself as being in business to perform similar services for others. The work relationship was continuous as opposed to a one-time transaction.

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.

Based on the information provided for this case, the worker performed domestic services for the individual. As a result, the worker is found to be an employee for federal employment tax purposes.

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