

SS-8 Determination—Determination for Public Inspection

Occupation

05PCP.63 Personal Care Worker

Determination:

☒ Employee

☐ Contractor

UILC

Third Party Communication:

☒ None

☐ Yes

Facts of Case

The firm operates an adult family home, providing for long-term care services for its clients who require ongoing care for their daily needs. The firm engaged the worker to perform services as a long term care provider, who duties included cooking, meal preparation, house cleaning, general supervision of clients, and administering medications with all meals. The firm treated the worker status as independent contractor, and issued to the worker a Form 1099-MISC at year-end to report the monies received for her services as non-employee compensation.

The worker received instructions from the firm's owners on how to make beds, feed the clients, how to use special lifts, and belts to assist with lifts. The worker received work assignments from the firm, and was also self directed in how and when to perform her services. The firm and worker both determined the work methods by which to perform the services. Problems and complaints were reported to the firm for resolution purposes. The worker performed her services at the firm's location, with helpers that were engaged by the firm, and paid by the firm for their services. The worker was required to complete client charts as to the services performed.

The firm provided the facilities, food, equipment, and supplies needed to perform the services. The worker provided her own uniforms. The worker did not incur work related expenses, nor did she incur economic loss or financial risk related to the services she performed for the firm. The firm paid the worker on an hourly wage basis for her services, and the firm received payment for services rendered to its clients.

Workers' compensation insurance was not carried on the worker. Employment benefits were not made available to the worker. There was no information provided to support that the worker performed similar services for others, or that she advertised her service to others while engaged by the firm. The work relationship was continuous as opposed to a one-time transaction.

Analysis

The statement that the worker was an independent contractor pursuant to an oral 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.

The facts provided for this case do not evidence the worker's behavioral control of the work relationship. The worker followed the firm's instructions, training, work methods, schedule, and routine in the performance of her services. The worker's services were performed personally, at the firm's location. The worker used the firm's facilities, equipment, tools, and supplies and represented the firm's business operations in the performance of her services. As a result, the firm retained the right to direct and control the worker to the extent necessary to protect its investment, and the reputation of its business operations.

The facts provided for this case do not evidence the worker's financial control of the work relationship. The worker's remuneration was established by the firm. The worker had no opportunity for profit or loss as a result of the services performed for the firm. "Profit or loss" implies the use of capital by a person in an independent business of his or her own. The worker did not have a significant investment in the facilities, equipment, tools, or supplies used to perform her services for the firm. The term "significant investment" does not include tools, instruments, and clothing commonly provided by employees in their trade; nor does it include education, experience, or training. Also, if the firm has the right to control the equipment, it is unlikely the worker had an investment in facilities.

The worker performed services as requested by the firm, for an indefinite period of time, and both parties retained the right to terminate the work relationship at any time without incurring liabilities. The facts provided for this case do not evidence that the worker was engaged in an independent enterprise, but rather show that she performed her services as a necessary and integral part of the firm's business operations. Integration of the worker's services into the business operations generally shows that the worker is subject to direction and control. When the success or continuation of a business depends to an appreciable degree upon the performance of certain services, the workers who perform those services must necessarily be subject to a certain amount of control by the owner of the business.

Based on common law principles, the worker shall be found to be an employee for Federal employment tax purposes. For correction assistance, you may refer to Publication 4341, which can be obtained at www.irs.gov