

SS-8 Determination—Determination for Public Inspection

Occupation

06AAS Aides/Assistants

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 provided housing, food and transportation for elderly adults placed in his home by a State agency. The worker performed services as a care assistant to the residents. The Owner of the firm responded to our request for information. He stated the worker wanted to be paid in cash, he told her he would pay her by check and issue Form 1099-MISC. He houses, feeds and transports elderly adults placed in his home by a State agency. No other information pertaining to the work relationship was provided.

The worker indicated she has a CNA License qualifying her to provide services. The worker applied for the position, had an interview with the firm. The firm instructed her where to work and when. If any problems arose she would contact the firm. She indicated she would stay in the clients home seven days a week, with Saturday and Sundays off, every other week. The worker indicated she had no authority to hire. The firm provided gloves and sanitary supplies. She provided her own uniforms and shoes. The worker indicated she was paid Seventy dollars per day. The client paid the firm. Either party could terminate the work relationship without incurring a penalty or liability. The worker indicated she did not perform similar services for others. She indicated all work was performed under the firm's business name. As of August 2018, the worker was still employed by the firm.

Analysis

We have applied the above law to the information submitted. 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, you retained the right to change the worker's methods and to direct the worker to the extent necessary to protect your financial investment.

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, but rather the services performed by the worker were a necessary and integral part of your business. Both parties retained the right to terminate the work relationship at any time without incurring a liability.

Conclusion:

Based on the above analysis, we conclude that the firm 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. The firm was responsible for the clients placed in his home. The worker had indicated the work schedule was set by the firm. She had been compensated a set daily rate of pay, indicating no opportunity or profit or loss.