

SS-8 Determination—Determination for Public Inspection

Occupation 06AAS Aides/Assistants	Determination: <input checked="" type="checkbox"/> Employee <input type="checkbox"/> Contractor
UILC	Third Party Communication: <input checked="" type="checkbox"/> None <input type="checkbox"/> 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

The payer is an individual desiring personal care services in his home. The worker was engaged by the payer to provide the services. The payer did not withhold taxes from the worker's remuneration in 2012 through 2017.

Information from the parties supports that the payer relied upon the worker's prior training and experience to perform his services. The worker's work assignments were based upon the payer's needs. If problems occurred, the worker contacted the payer's spouse for resolution. The worker stated he was responsible for reporting the worker's blood pressure, glucose testing, and oxygen level monitoring, as well as inventory reporting. He reported any changes to the payer's mental or physical well-being. The worker generally followed a routine schedule. He was required to perform his services personally. The worker performed his services in the payer's home or at other locations as directed. The worker was responsible for finding substitutes or helpers. The payer was responsible for their compensation, which was deducted from the amount due the worker per month.

The payer provided all the basics: bed, clothes, medicine, wheelchair, walker, etc. The payer paid the worker a flat fee per month, plus amounts for additional work performed (i.e. running errands). The payer did not cover the worker under workers' compensation. Neither party indicated an investment by the worker in a related business, or the risk of the worker incurring a financial loss beyond the normal loss of compensation.

The payer awarded the worker bonuses. The worker provided similar services for other during the same time period, and did not require approval by the payer. There is no evidence presented showing the worker advertised his services or maintained a business listing. Both parties reserved the right to terminate the work relationship without incurring a penalty or liability, and in fact, the worker terminated the work relationship.

Analysis

Factors that illustrate whether there was a right to control how a worker performed a task include training and instructions. In this case, while the payer relied upon the worker's prior training and experience to perform his services, the payer's spouse was responsible for resolving any problems that may have occurred. The payer and his spouse must have retained the right to change the worker's methods and to direct the worker to the extent necessary to ensure that he performed his services in a satisfactory manner. The worker generally performed his services in the payer's home and followed a schedule determined by the payer's needs. 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. The worker was required to perform his services personally. If the services must be rendered personally, presumably the person or persons for whom the services are performed are interested in the methods used to accomplish the work as well as in the results. These facts show that the payer retained behavioral control over the services of the worker.

Factors that illustrate whether there was 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. "Profit or loss" implies the use of capital by a person in an independent business of his or her own. Lack of significant investment by a person in facilities or equipment used in performing services for another indicates dependence on the employer and, accordingly, the existence of an employer-employee relationship. The firm paid the worker at a set rate, and the risk of loss was absent. Workers are assumed to be employees if they are guaranteed a minimum salary. These facts show that the payer retained control over the financial aspects of the worker's services.

Factors that illustrate how the parties perceived 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 were part of the service recipient's regular business activities. In this case, the worker performed his services on a continuing basis. He was not engaged in an independent enterprise, but rather the services performed by the worker were a necessary and integral part of the business arrangement. Integration of the worker's services into the business arrangement generally shows that the worker is subject to direction and control. When the success or continuation of a business arrangement 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 payer. The worker performed similar services for others during the same time period; however, it is possible for a person to work for a number of people or firms concurrently and be an employee of one or all of them. Although the payer did not provide general benefits to the worker, the worker terminated the work relationship without incurring a liability. If the worker has the right to end his or her relationship with the person for whom the services are performed at any time he or she wishes without incurring liability, that factor indicates an employer-employee relationship. These facts show that the payer retained control over the work relationship and services of the worker.

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.