

SS-8 Determination—Determination for Public Inspection

Occupation

05CSI.20 Companion Sitter

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**

The firm is a home care provider business operation. The firm engaged the worker under a signed independent contractor agreement to perform care provider services for clients who contacted the firm seeking care providers to perform in home services based on the clients needs. The firm offered the worker job opportunities which the worker may accept or decline. In this case, the worker accepted a job offered by the firm and agreed to perform services for a client based on the clients needs. The client and the worker determined what, when, how, and where the worker would perform the services.

The worker and the client determined worker's work schedule and rate of payment for the services. The worker and client determined who provided the methods and means used to perform the services. The firm is paid a fee for care giver referrals. The worker and client determined the hourly rate which was increased during the working relationship however the firm's fee remained the same. The client paid the worker through an escrow account maintained by the firm as a service provided to the clients. The client reported hours worked by the worker on invoices and the firm invoiced the client for hours worked by all care providers and disbursed the payment to the workers. The worker had control over the working relationship on whom the worker would perform the services and the number of hours the worker performed services for clients referred through the firm's business.

There was a signed independent contractor agreement entered into at the beginning of the working relationship. The worker was not prohibited from performing services on her own or for other referral operations while performing services for the firm. The worker advertised as a self-employed caregiver to the public through various resources. The worker and client could terminate the working relationship at any time without liability, The firm could not terminate the working relationship between the worker and client.

Analysis

In this case, the firm did not have control over what, when, how, and where the worker chose to perform services. The worker entered into a contract as a care provider to be registered with the firm to perform care provider services for clients who contacted the firm looking for services. The worker could accept or decline jobs offered and if the client and worker agreed the worker would perform services according to agreements entered into between the client and the worker. The client and worker determined what, how, when, and where the worker would perform the services. The worker and client determined the methods and means used to perform the services. The worker and client determined whom the worker would contact regarding any problems or complaints for resolution. The worker and client determined who would provide substitutes or helpers if needed. These facts evidence behavioral control by the worker over the services being performed.

The client and worker determined whom would provide equipment, materials, and supplies needed to perform the services. The worker provided the credentials, experience, and personal items. The client paid the worker an agreed hourly wage through an escrow account facilitated by the firm. The client provided the firm with invoices indicating the number of hours the worker performed services for payment purposes and the firm paid the worker. The firm was paid a fee for providing the caregivers to perform services for the clients. The client could increase the hourly rate of pay paid to the care provider without any increase to the firm's fee payment. The worker remained in control over the profits and losses with regard to performance of the services for clients through the worker's resources. These facts evidence financial control by the worker over the services performed in the independent contractor relationship.

There was a signed independent contractor agreement entered into between the firm and worker indicating the worker to be listed on the firm's list of available caregivers as an independent contractor for referral to potential clients. The fees payable by the clients through an escrow account maintained by the firm included the risk by the worker of nonpayment by the client. The worker agreed to submit invoices pertaining to the services performed for a client in order for the firm to invoice the client for the services. The client only had the right to determine the specifics of the services the worker performed and the firm had no right to interfere in the care relationship the worker established with the client. The worker represented and warranted to be self-employed, to be in a independent business or occupation, advertised to the public as being competent and available to provide caregiver services, and has obtained clients through other means. The contract addressed responsibilities and duration of the working relationship, indemnification, breach, and acceptance of the agreement. There were no liabilities indicated for termination of the working relationship unless a breach of the agreement occurred. The worker would be liable for any breaches. The firm did not guarantee any amount of jobs referrals being offered for consideration to the worker.