

SS-8 Determination—Determination for Public Inspection

Occupation

01FRW Farm/Ranch Workers

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 horse boarding and training facility. The worker was engaged by the firm as a stable hand. The firm reported the worker's remuneration on Forms 1099-MISC for 2017. The firm stated that the worker was hired as an independent contractor, worked when she was able to, and submitted invoices on a bi-weekly basis.

Information provided by the worker states that the firm provided the worker with her work assignments and the methods by which to perform them. The worker generally followed a routine schedule. She performed her services on the firm's premises. The worker was required to perform her services personally. If additional personnel were needed, the firm was responsible for hiring and compensating them.

The firm provided all supplies, equipment, materials, and the property. The worker did not incur expenses in the performance of her services. The firm paid the worker at an hourly rate. Customers paid the firm directly at prices established by the firm. The worker did not indicate an investment in the firm or a related business, or the risk of incurring a financial loss beyond the normal loss of compensation.

The firm did not make benefits available to the worker. The worker stated that she did not advertise her services or provide similar services for others during the same time period. 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

Section 31.3121(d)-1(a)(3) of the regulations provides that if the relationship of an employer and employee exists, the designation or description of the parties as anything other than that of employer and employee is immaterial. Thus, if an employer-employee relationship exists, any contractual designation of the employee as a partner, coadventurer, agent, or independent contractor must be disregarded. Therefore, your statement that the worker was an independent contractor pursuant to an 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.

Factors that illustrate whether there was a right to control how a worker performed a task include training and instructions. In this case, the firm provided the worker with her work assignments and the methods by which to perform them, showing it retained the right to change the worker's methods and to direct the worker to the extent necessary to protect its financial investment. The firm allowed the worker flexibility in her schedule, but required her to follow the schedule once set. She performed her services on the firm's premises. 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 submit invoices on a bi-weekly basis. A requirement that the worker submit regular or written reports to the person or persons for whom the services are performed indicates a degree of control. The worker was required to perform her services personally, meaning that she could not engage and pay others to perform services for the firm on her behalf. 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 firm 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 an hourly rate. Payment by the hour generally points to an employer-employee relationship. These facts show that the firm 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 was not engaged in an independent enterprise, but rather the services performed by the worker were a necessary and integral part of the firm's business. 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. Although the firm did not make benefits available to the worker, the worker terminated the work relationship without incurring liability or penalty. 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 firm retained control over the work relationship and services of the worker.

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.