

SS-8 Determination—Determination for Public Inspection

Occupation

01PLW Plant & Land Maintenance 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 in the business of providing pest control treatments for lawns. The worker was a certified pest control and lawn technician. He received a 2017 Form 1099-MISC as well as a Form W-2 from a payroll service. He previously had received Forms W-2 for 2011 through 2016, either from the firm or the payroll service company that it used. There was no written agreement.

In this case, the firm agreed that the worker was an employee with both parties providing the following information. The firm provided training, instructions, and the work assignments though the firm noted that the worker was certified and trained by the state. The worker had a list of customers and treatment schedules. Each party indicated that the other determined the methods by which the assignments were performed but both agreed that the firm would be contacted if any issues or problems arose. There were service reports. The worker provided pest control treatments at customer sites and made his own schedule. No meetings. Both parties agreed that the worker performed the services personally with only the firm hiring and paying any substitutes.

The firm supplied the pest control supplies and vehicle. The worker was paid a salary/or hourly rate of pay and had no other economic risk. The customer paid the firm. The firm noted that it carried workers' compensation insurance on the worker. Both parties agreed that the worker established the level of payment of services.

Both the firm and the worker agreed that there were no benefits and that either party could terminate the relationship without incurring a liability. The worker did not perform similar services for others. The worker provided pest control for the firm's customers and was not required to solicit customers. Leads were provided by the firm who determined the worker's territory. The firm noted that the worker provided leads as well and both determined the worker's territory. The relationship ended when the worker quit.

Analysis

In determining whether an individual is an employee or an independent contractor under the common law, all evidence of both control and lack of control or independence must be considered. The relationship of the worker and the business must be examined. Facts that show a right to direct or control how the worker performs the specific tasks for which he or she is hired, who controls the financial aspects of the worker's activities, and how the parties perceive their relationship should be considered. 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.

In this instant case, the firm agreed that the worker was an employee but supplied the worker with a Form 1099-MISC in error. The prior treatment of the worker as an employee, whether the Form W-2 was issued by the firm or by its payroll service company, was also an indication that the worker was an employee.

In addition, the various facts presented support an employee finding. Factors that illustrate whether there is a right to control how a worker performs a task include training and instructions. In this case, the firm retained the right to change the worker's methods and to direct the worker to the extent necessary to protect its 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.

Based on the above analysis, we conclude that the firm had the right to exercise direction and control over the worker for the entire work relationship to the degree necessary to establish that the worker was a common law employee and not an independent contractor operating a trade or business.

Please see Publication 4341 for guidance and instructions for firm compliance.