

SS-8 Determination—Determination for Public Inspection

Occupation

02AAD Administrator

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 business offering [REDACTED] based school to students from 6 weeks old to 5th grade as a exempt organization. The firm originally engaged the worker in 2015 & 2016 as a consultant under the worker's business name to provide graphic design services for the school and paid the worker an hourly wage per invoices submitted under the worker's business name per checks submitted. The worker determined the hours worked until Jan. 30, 2017 when the worker was required to work 40 hours a week on a flexible schedule basis. The firm listed duties the worker was required to perform in an employment offer letter as an interim administrator until the position was filled.

The firm would pay the worker a set amount twice per month on the listed dates. The firm required the worker to provide listed documentation and attend various health safety training within 30 days of beginning the job. The worker signed an acceptance offer regarding this job at the monthly payment amount in Feb. 2017. The worker submitted invoices for the monthly payment under the worker's business name every two weeks. The firm reimbursed all business expenses listed on the invoices. The firm also allowed the worker cash advances and the worker provided a list of items purchased with the cash advances.

The Department of Labor investigated the working relationship when the worker filed for unemployment after the relationship ended. The investigation determined the same services were performed 2015 through 2017 even though the offer letter indicated a different type of service being performed. The issue of the worker being paid under a unlicensed inactive business name was addressed and the worker was paid an hourly rate at the same amount during the entire working relationship even though the offer letter indicated a set amount being paid twice per month it was the same hourly amount. The worker was determined to have been an employee and eligible for benefits.

The firm indicated the worker did perform similar services for others and was not required to obtain the firm's prior approval to do so. The firm did not know if the worker advertised as a business and the worker indicated not advertising as a business. Both parties agreed that the working relationship could be terminated at any time by either party without any liability. The firm terminated the worker from performing services for the firm.

Analysis

When a firm determines or retains the right to determine directly or through designation what, how, when, and where workers perform services an employer/employee relationship exists. For federal employment tax purposes, it is not necessary for firms to exert direct or continuous control nor that services be performed full-time on a fixed scheduled basis, it is sufficient that the firm retains the right to change the workers services, as they deem necessary for business purposes. This control may come from verbal instructions, training, meetings, reporting, as well as supervision. Also, the methods used by workers to perform services are not only controlled through verbal instructions but also by equipment, materials, and supplies provided. In this case, the firm not the worker had control over the methods and means used in the performance of the services. These facts evidence behavioral control by the firm over the services performed by the worker.

When a worker does not have a significant financial investment in a business requiring capital outlays with business risk an employer/employee relationship is evident. In this case, the worker had no significant on-going financial investments in a business and did not incur any on-going significant on-going business expenses. The firm had the business investment and control over profit and risk of loss with regard to the services the worker performed for the firm's business. The firm paid the worker an hourly wage and the customers paid the firm. The firm determined the level of payment for the services. The worker could not suffer any economic loss and had no financial risk with regard to performance of services for the firm's business. These facts evidence financial control by the firm over the services performed by the worker.

There were no written signed contracts between the firm and the worker. The worker signed a job offer letter towards the end of the working relationship that indicated job expectations, requirements, and payment for services terms. The firm indicated the worker did perform similar services for others and was not required to obtain the firm's prior approval. Although this could be an important factor to consider in an independent contractor relationship, this factor alone would not make the worker to be an independent contractor. Many workers have more than one job at a time and may be an employee in one or all working relationships depending on the autonomy of each one. The worker personally performed services on a regular and continuous basis over several years under the firm's business name for the firm's business operation.

Both parties retained the right to terminate the working relationship at any time without incurring any liability. The right to discharge a worker at any time without incurring a liability for termination is a factor indicating that the worker is an employee and the person possessing the right is an employer. An employer exercises control through the threat of dismissal, which causes the worker to obey the employer's instructions. An independent contractor, on the other hand, cannot be fired without a liability so long as the independent contractor produces a result that meets the contract specifications. Likewise, 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.