
SS-8 Determination—Determination for Public Inspection

Occupation

Business/Computer Services/Office/Sales

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 worker submitted a Form SS-8 for services performed for the firm as a Studio Assistant from July 2023 until May 2025. The worker filed a Form SS-8 because they believe that they erroneously received a 1099-NEC from the firm.

The worker states that they were an employee of the firm because the firm made the decisions, they were trained for the job and worked at the firms location. There were no written agreements between the parties. The oral agreement between the parties was that the worker would be paid an hourly wage with some flexibility.

The firm states that they are a self-employed artist. The firm hired the worker as an independent contractor to provide preparatory work such as sanding, cutting, cleaning metal and painting frames. The firm classified the worker as an independent contractor because the worker was asked to help seasonally, based on the firms needs. The worker was also free to work other jobs. There were no written agreements between the parties. The oral agreement between the parties was that the worker would be paid by 1099 as an independent contractor. They would be paid by the work accomplished.

The firm states that the worker was explained the job duties and the worker decided how to complete the process. The firm gave the worker job assignments in person. The worker determined the methods by which job duties were completed. If the worker encountered any problems or complaints while working, the worker was to handle it. The worker would be responsible for the problem resolution. The firm did not require the worker to complete any reports. The worker completed tasks at their own schedule on the firm's premises. The firm did not require the worker to attend meetings. The firm did require the worker to provide services personally. The worker could not hire helpers or substitutes.

The worker states that they were instructed of assembly, material preparation, chemical formulas for painting, art handling and storage. The firm owner gave the worker job assignments in person, by phone, and through text messages, and determined the methods by which job duties were performed with some input from the worker. If any problems or complaints arise, the firm owner was to be contacted. The firm owner was responsible for the resolution. There were no reports required of the worker. The worker performed art fabrication and studio maintenance duties as scheduled and as needed, 100% of the time at the firm's premises. The worker was required to attend informal staff meetings but would not be penalized if not in attendance. The firm required the worker to personally perform services. The worker had no hiring authority.

The firm states that they provided the art studio, various tools, paint and chemicals while the worker provided tools, material as needed and protective gear. The worker did not provide or lease any space or equipment. The worker did incur job-related expenses such as tools and materials needed for the task and was reimbursed by the firm. The firm paid the worker an hourly pay. The firm did give the worker access to advance pay, as needed, based on the task. The firm did not carry worker's compensation insurance on the worker. The worker did not take a financial risk or suffer a financial loss while working for the firm. The firm and worker both agreed the rate of pay for services performed.

The worker states that they did not lease any space or equipment and did not incur any job-related expenses. The firm paid the worker an hourly rate of pay. The worker could request advance pay. Customers paid the firm. The worker had no exposure to financial risk or loss by performing services.

The firm states that they did not provide benefits to the worker. The firm or worker could end the work relationship without incurring penalty. The worker did not perform similar services for other firms. There were no non-compete agreements in place between the parties. The worker did not advertise their services to the public. The worker did not assemble or process products at home. The firm did not introduce the worker to its customers. The worker no longer works for the firm.

The worker states that there were no benefits provided to them by the firm. The worker did not advertise their services to the public or assemble products at home. The firm did introduce the worker to its customers as an employee. Services were performed under the firm's name. The worker ended the worker relationship.

Analysis

Generally, the relationship of employer and employee exists when the person for whom the services are performed has the right to control and direct the individual who performs the services, not only as to what is to be done, but also how it is to be done. It is not necessary that the employer actually direct or control the individual, it is sufficient if he or she has the right to do so.

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, co-adventurer, agent, or independent contractor must be disregarded.

Therefore, a statement that a worker is an independent contractor pursuant to a written or verbal 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. Furthermore, whether there is an employment relationship is a question of fact and not subject to negotiation between the parties.

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. This control factor is present if the person or persons for whom the services are performed have the right to require compliance with instructions. Some employees may work without receiving instructions because they are highly proficient and conscientious workers or because the duties are so simple or familiar to them. Furthermore, the instructions, that show how to reach the desired results, may have been oral and given only once at the beginning of the relationship. In this case, the firm states that the worker was explained the job duties and the worker decided how to complete the process.

If the work is performed on the premises of the person or persons for whom the services are performed, that factor suggests control over the worker, especially if the work could be done elsewhere. Work done off the premises of the person or persons receiving the services, such as at the office of the worker, indicates some freedom from control. However, this fact by itself does not mean that the worker is not an employee. The importance of this factor depends on the nature of the service involved and the extent to which an employer generally would require that employees perform such services on the employer's premises. Control over the place of work is indicated when the person or persons for whom the services are performed have the right to compel the worker to travel a designated route, to canvass a territory within a certain time, or to work at specific places as required.

Payment by the hour, week, or month generally points to an employer-employee relationship, provided that this method of payment is not just a convenient way of paying a lump sum agreed upon as the cost of a job. In such instances, the firm assumes the hazard that the services of the worker will be proportionate to the regular payments. This action warrants the assumption that, to protect its investment, the firm has the right to direct and control the performance of the workers. Also, workers are assumed to be employees if they are guaranteed a minimum salary or are given a drawing account of a specified amount that need not be repaid when it exceeds earnings.

The right to discharge a worker 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 so long as the independent contractor produces a result that meets the contract specifications.

Factors that illustrate how the parties perceive their relationship include the intent of the parties as expressed in oral 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. 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. Both parties retained the right to terminate the work relationship at any time without incurring a liability. There is no evidence to suggest the worker performed similar services for others as an independent contractor or advertised business services to the general public during the term of this work relationship. The classification of a worker as an independent contractor should not be based primarily on the fact that a worker's services may be used on a temporary, part-time, or as-needed basis. As noted above, common law factors are considered when examining the worker classification issue.

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.

The firm can obtain additional information related to worker classification online at www.irs.gov; Publication 4341.