

SS-8 Determination—Determination for Public Inspection

Occupation

02ABT Business, Office, & Sales Services

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 operating a medical clinic. The firm engaged the worker through a referral to perform billing services for the firm's business. The firm provided the worker with job expectation instructions. The firm assigned the worker jobs to perform via on line notification. The firm and the worker determined the methods used by the worker to perform the services. The worker contacted the firm regarding problems or complaints for resolution. The worker provided the firm with reports via on line documentation. The firm did not assign the worker a schedule to work but allowed the worker to determined when to perform the services. The worker performed the services from home. The firm did not require the worker to perform the services personally. The worker would pay substitutes or helpers if he hired any. The firm's approval was not required and the firm would no reimburse any payment made to any.

The worker provided a personal computer and space at home. The firm did not know if the worker leased anything or what business expenses the worker incurred. The worker indicated nothing was leased and expenses incurred related to the use of his computer. The firm did not reimburse any expenses. The firm paid the worker an hourly wage and the customers paid the firm through various resources. The worker did not determined the level of payment for the services. The worker could not suffer any economic loss and had no financial risk with regard to the services performed for the firm's business.

There were no contract between the firm and the worker. The worker did not perform similar services for others or advertise as a business to the public. The firm did not know if the worker performed similar services for others and indicated the firm's approval was not required for the worker to do so. Both parties retained the right to terminate the working relationship at any time without incurring any liability.

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. In this case, the worker performed the services from home on a flexible schedule. The firm assigned the worker jobs to perform virtually from home. The firm provided the worker with job expectations at the beginning of the working relationship. Although the issue of the services being performed away from the firm's place of business could be an important factor in considering an independent contractor relationship, this factor alone would not make the worker to be an independent contractor. Many workers work from home and are still employees due to the fact that they have no significant business investments or control over profit and loss with regard to the services being performed. The worker provided reports on the services performed and performed the services personally over several months. These fact 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 financial investment in a business and did not incur any on-going significant business expenses. The worker did not lease equipment or space. 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 through their resources. The worker did not determined the level of payment for the services. These facts evidence financial control by the firm over the services performed by the worker.

There were no contracts between the firm and the worker. The worker did not perform similar services for others or advertise to the public as being engaged in a business. The worker personally performed services for the firm's business at the worker's home on a regular and continuous variable flexible schedule over a period of several months under the firm's business name. Both the firm and the worker 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.