

SS-8 Determination—Determination for Public Inspection

Occupation

02ABT Accountants/Bookkeepers/Tax Preparers

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**

Information provided indicated the firm is a mortgage lending company. The worker performed services as the firm's Human Resources Consultant to do ADP Payroll, Audit and HR process overview and recommendations in 2017. The firm reported the income on Form 1099-MISC. A copy of the contract was provided which outlines the term services to be provided and the compensation paid. The contract was extended on two separate occasions per agreement of both parties. The contract indicated the worker would be an independent contractor. The firm stated direction was taken from the VP of HR. That person also resolved any conflicts or issues. The worker provided written recommendations and completed assignments. The firm indicated the worker performed services on average Monday through Friday eight to four. All services were performed at firm headquarters. The firm provided the computer, access to HR website/software. The worker was paid by the hour. The customer paid the firm. Either party could terminate the work relationship without incurring a penalty or liability. The firm indicated she did not perform similar services for others. The contract ended upon completion of assignments.

The worker indicated she applied for the position she found on Indeed.com. It did not mention it was a contract position. When interviewed, they asked if she would be willing to do the job on contract for one month until they made sure she was a good fit. She agreed expecting to be hired on permanently within four to six weeks. The firm determined the work performed, where it would be performed and the hours of work. The agreement was to be paid by the hour for a forty hour work week. She was expected to work in the firm's HR office during regular business hours. She worked seven to four. With exception to a few hours on one Saturday. The worker indicated no formal training was given, as she was hired for her skill set. Instruction was given as to the company's specific information throughout the services. Direction came from the firm's VP of HR. She was given a badge that gave access to the building and parking garage. She was also given keys to her desk and office door. All correspondence was signed via the firm's signature line, as the HR Consultant. She stated she submitted timesheets (invoices) and was paid weekly after approval. A copy was provided by the worker. The firm provided all equipment and office supplies, she utilized the break room, free coffee, attended all employee recognition lunches etc. The worker stated she met with the VP of HR Daily to go over what she was working on and to get further guidance. The worker also provided copies of the extension agreement e-mails from the firm.

ANALYSIS

The question of whether an individual is an independent contractor or an employee is one that is determined through consideration of the facts of a particular case along with the application of law and regulations for worker classification issues, known as "common law." Common law flows chiefly from court decisions and is a major part of the justice system of the United States. Under the common law, the treatment of a worker as an independent contractor or an employee originates from the legal definitions developed in the law and it depends on the payer's right to direct and control the worker in the performance of his or her duties. Section 3121(d)(2) of the Code provides that the term "employee" means any individual defined as an employee by using the usual common law rules.

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.

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. We must examine the relationship of the worker and the business. We consider 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 finan

Analysis

We have applied the above law to the information submitted. As is the case in almost all worker classification cases, some facts point to an employment relationship while other facts indicate independent contractor status. 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.

Evidence of control generally falls into three categories: behavioral control, financial control, and relationship of the parties, which are collectively referred to as the categories of evidence. In weighing the evidence, careful consideration has been given to the factors outlined below.

Factors that illustrate whether there is a right to control how a worker performs a task include training and instructions. In this case, you retained the right to change the worker's methods and to direct the worker to the extent necessary to protect your 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. 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 your business. Both parties retained the right to terminate the work relationship at any time without incurring a liability.

Conclusion:

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. Based on the information provided I find the services were performed on a full time basis exclusively for the firm. Although the firm attempted to make it an independent agreement, they had first priority over her time (ie, non-compete and as long as it did not interfere with her obligation to the firm.) The worker did not just perform payroll services, but any other services as determined as assigned by the firm. Since she performed services on a full time basis Monday through Friday, it left little time to provide services elsewhere. The worker was paid by the hour, on a weekly basis. Although "invoices" were submitted, they were basically a timesheet required by the contract.