

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 contract business management/financial management service company, in the fashion industry. The worker was hired as an analyst/accounts coordinator for tax year 2017. The firm responded to our request for information stating the worker was an independent contractor stated her schedule was managed independently. No client they work with hire them as full time employees. The firm stated the worker was trained by the freelance owner. Work assignments were contracts based from the owner. If issues arise the worker would usually work with the clients to resolve, then reports to the owner. She was to provide time and hourly reports of progress. The firm indicated the worker chose the 30-40 hour work schedule. Services were performed at home and at the clients location. The worker provided her own computer. The client provided the office and supplies. The firm indicated the worker was paid a biweekly amount. The client paid the firm. The firm indicated the worker received paid vacations, sick pay, paid holidays, personal days and bonuses. Either could terminate the work relationship without incurring a penalty or liability. The worker is referred to as an associate of the company. The firm indicated the worker quit.

The worker filed the request for the work classification determination stating she should have received Form W-2 as an employee and not Form 1099-MISC. The worker provided a copy of the offer of employment as a Financial Analyst for the firm. It explained the job responsibilities and client needs. It states work was to begin April 3, 2017 and she would be considered a full time employee, with an annual salary, with discretionary bonus after six months. She would be entitled to two weeks paid vacation, five days for sick or personal issues. The worker provided a copy of the firm's employment handbook also. The worker indicated she worked Monday through Friday ten am to six pm. Weekly virtual meetings and occasional staff meetings were required. All work assignments received from owner. The worker indicated the firm provided computer equipment. The worker also used her personal computer, offsite. She agreed the client paid the firm. She agreed she was given a full benefits package, and twenty percent health care expenses (included in the total of the 1099-MISC. Either party could terminate the work relationship without incurring a penalty or liability. All work was performed as an employee under the firm's business name. She agreed she quit.

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 financial aspects of the worker's activities, and how the parties perceive their relationship. The degree of importance of each factor varies depending on the occupation and the context in which the services are performed. Therefore, your statement that the worker was an independent contractor pursuant to an 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.

-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.

-Training a worker by requiring an experienced employee to work with the worker, by corresponding with the worker, by requiring the worker to attend meetings, or by using other methods, indicates that the person or persons for whom the services are performed want the services performed in a particular method or manner. This is true even if the training was only given once at the beginning of the work relationship.

-Workers are assumed to be employees if they are guaranteed a minimum salary.

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 this is an erroneous misclassification of employment. The worker provided the offer letter of employment given from the firm that guaranteed her a yearly salary. She was also given a full benefits package, as explained in the employment handbook. The fact the firms' clients do not hire them on full time, does not make the individuals working for the firm independent contractors. The firm is in business, not the workers. They are hired to assist the firm in servicing their clients to help to maintain that business. We conclude 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.