

SS-8 Determination—Determination for Public Inspection

Occupation 02ABT Accountants/Bookkeepers/Tax Preparers	Determination: <input checked="" type="checkbox"/> Employee <input type="checkbox"/> Contractor
UILC	Third Party Communication: <input checked="" type="checkbox"/> None <input type="checkbox"/> 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 an entity that provides a selection of contemporary finishing products for Designers, Builders, Architects, Commercial and Residential Customers. The firm is an entity that engaged the worker as an AP/AR Payroll Clerk from 05/2019 to 04/2020. The worker submitted a Form SS-8 after receiving a Form 1099-Misc from the firm. The firm replied with a Form SS-8.

The worker completed an application for the job. She provided a copy of the job description that was given to her. In the job description there was a list of many responsibilities that were required of the worker. Such as being required to ensure efficient and smooth financial management of the AR/AP payroll of the company, process and maintain financial accounts and paperwork, communicate regularly with all vendors and customers of the firm. She also managed bank accounts and deposits for the firm. The worker was expected to provide the highest quality results of her required duties in an expeditious and timely manner to ensure smooth operation of the firm. The worker received training on how to process vendor invoices, office procedures, instructions regarding work duties and was trained on how to use the company portal. She was also given a company handbook along with a key to the establishment. The firm proclaimed no training was given to the worker due to the fact she claimed to be a highly experienced CPA. The worker stated she would receive her work assignments from the manager, sales team, and business owner. According to the firm, her work assignments were based on sales volume and she determined the methods of how those assignments were performed. However, the worker claimed the methods by which those assignments were performed was up to the owner of the company. Both parties agree the owner of the firm was responsible for problem resolution. The worker was required to submit reports such as financial reports, daily balance reports, P&L and responded to all requests for reports from the owner of the firm. The workers schedule was Monday-Friday. She worked 10:00 am to 6:00 pm. She would perform duties that were assigned to her by management, respond to request from vendors and sales staff. She also answered phones, greeted customers, received deliveries, and aided other staff as needed. Comparatively, the firm claimed the worker could determine her own schedule based on volume and needs. She received regular weekly remuneration for her services. She performed all her services on the firm's premises until the COVID-19 lock down. The firm maintained the worker worked 70% at the firm and 30% from home. The worker was required to attend meetings if any were scheduled whereas the firm specified meetings were not required. The relationship between the parties was continuous, as opposed to a one-time transaction. The nature of this relationship contemplated that the worker would perform the services personally. The worker worked exclusively and on a continuing basis for the firm. Her services were an integral and necessary part of the services the firm provided to its customers. The firm would hire and pay any substitutes or helpers.

The firm furnished the worker with office space and equipment, at no expense to her. The worker did not lease equipment. The firm determined the fees to be charged. The worker did not incur any significant business expenses and was not reimbursed by the firm. The worker was paid an hourly wage. The firm did not allow the worker a drawing account, or advances against anticipated earnings. The firm's customers paid the firm. The firm did not carry worker's compensation insurance on the worker. The firm established the level of payments for the services provided. The worker did not have a substantial investment in equipment or facilities used in the work and did not assume the usual business risks of an independent enterprise.

The worker was not eligible for sick pay, vacation pay, health insurance, or bonuses. Either party could terminate the worker's services at any time without incurring a penalty or liability. The worker was not a member of a union. All work produced became the property of the firm. According to the firm, the worker owned and operated her own accounting company. However, according to internal research, the worker did not perform similar services for others. She did not advertise her services to the public nor did she maintain an office, shop, or other place of business. She was required to perform the services under the name of the firm and for the firm's customers. The relationship between the parties has ended. Both parties agree the worker was terminated.

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.

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.

A continuing relationship between the worker and the person or persons for whom the services are performed indicates that an employer-employee relationship exists. A continuing relationship may exist where work is performed in frequently recurring although irregular intervals.

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.

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 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.

Usually, independent contractors advertise their services and incur expenses for doing so. In this case, the worker not only did not advertise her services, but she filled out an application for a job. This is a strong indicator that the worker is not an independent contractor.

Based on the common-law principles, the firm had the right to direct and control the worker. The worker shall be found to be an employee for Federal tax purposes.

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