

SS-8 Determination—Determination for Public Inspection

Occupation

02ADM Administrators

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 in the business of providing management consulting and support services. The worker was engaged as a test administrator for the firm's client. She received a Form 1099-MISC for her services in 2016 and 2017. There was a written part-time employment agreement as well as a statement of work detailing the position.

The firm indicated that there was no training; however, the worker noted that she was provided with training on software, and on the processing/certification of exams. She received her work assignments from the education office personnel who determined the days, hours, and seats allotted for each testing session; the firm agreed that the client determined the test schedules. Both parties agreed that the firm's client determined the methods by which the assignments were performed. The test control officer or the firm would be contacted, dependent on the issue or problem that arose. There were daily required reports; the firm disagreed. Both agreed that her work routine entailed set scheduled hours and days according to the client's needs. The worker performed her services at the client's location as designated by the firm. There were no required meetings. Both parties agreed that the worker was required to provide her services personally.

Both the firm and the worker agreed that everything was provided through the firm's client. The worker was paid an hourly rate and had no other economic risk. The customer paid the firm. The firm carried worker's compensation insurance on the worker and established the level of payment for services.

Both the firm and the worker agreed that there were no benefits and that either party could terminate the relationship without incurring a liability. The worker did not perform similar services for others. The relationship has ended.

Analysis

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. The relationship of the worker and the business must be examined. 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 should be considered. 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.

Factors that illustrate whether there is a right to control how a worker performs a task include training and instructions. In this case, the firm retained the right to change the worker's methods and to direct the worker to the extent necessary to protect its financial investment. The firm obtained the client and engaged the worker to provide support services as a test administrator. The worker had the necessary skills, experience, and met the criteria for the position as required by the firm. She worked set scheduled hours/days at the location as designated by the firm's client. The description of her expected services were also outlined in the statement of work between the firm and worker. The fact that the information addressing the work position was client-driven was understandable as the client engaged the firm to provide the services. 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. In addition, the worker was required to provide her services personally and could not assign her job to another. Again, this is understandable as the worker met the firm's (client) requirements. If the services must be rendered personally, presumably the person or persons for whom the services are performed are interested in the methods used to accomplish the work as well as in the results. Furthermore, the worker's services were part-time but continuous. 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.

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. The worker simply received an hourly rate of pay and had no other economic risk other than the loss of her compensation. 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.

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. There were no benefits and there was a written agreement. The agreement provided information about the work relationship supporting an employer-employee relationship between the parties. The fact that the worker was notified that she was to receive a Form 1099-MISC for her services without any withholdings did not make her self-employed when the facts of the case indicate otherwise. The worker was engaged as a test administrator by the firm to provide that service to its client. When doing so, the worker was not engaged in a separate business venture. Integration of the worker's services into the business operations generally shows that the worker is subject to direction and control. When the success or continuation of a business depends to an appreciable degree upon the performance of certain services, the workers who perform those services must necessarily be subject to a certain amount of control by the owner of the business.

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.

Please see Publication 4341 for guidance and instructions for firm compliance.