

SS-8 Determination—Determination for Public Inspection

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| Occupation 02ALI Archivists/Librarians | 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

Information provided indicated the firm is an oil and gas historical and research library. The worker performed general labor services to move boxes, filing cabinets, bookshelves. Services were provided in 2015, 2016 and 2017, the firm reported the income earned on Form 1099-MISC, stating he was told what to accomplish, he was not supervised, he could do the work in his own manner as long as the end result needed by the library was achieved. There was no written agreement. Work assignments were verbally conveyed to the worker by the manager. No reports were required. He was allowed to report to work at his own discretion. All work was performed on firm premises. The firm provided the filing cabinets, boxes, bookcases, books and files. The worker was paid by the hour. He was allowed to draw pay upon completion of any day's work. Either party could terminate the work relationship without incurring a penalty or liability. The firm stated the worker failed to complete the job, quit and returned to school.

The worker indicated he was directly supervised and reported to the manager. He stated he was required to work eight to five, and had to ask for approval for time off, or altering the work schedule. He clocked in and out with a time card and was paid on a monthly basis, based on an hourly wage. The worker left to go back to college.

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. The establishment of set hours of work by the person or persons for whom the services are performed is a factor indicating control. The worker indicated he was required to clock in and out each work day. 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. The instructions, that show how to reach the desired results, may have been oral and given only once at the beginning of the relationship.

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. Payment by the hour, week, or month generally points to an employer-employee relationship.

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. The worker was required to clock in and clock out each work day. He was paid by the hour. The fact services were performed during summer months off from school, does not make the worker an independent contractor. Furthermore, instructions could have been given once at the beginning of the work relationship. The fact the worker was then able to perform services without supervision or further direction, does not mean the firm did not retain the right to do so.