

SS-8 Determination—Determination for Public Inspection

Occupation

02CON Consultants

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 a corporation providing development and implementation of enterprise software to the customers. The firm engaged the worker as a consultant. There was a written agreement between the two parties. The worker filled out an application for the position.

The worker received training from the firm. The worker discussed his assignments with the firm. The worker relied upon the firm to resolve his problems and complaints. The worker was required to submit invoices bi-weekly which included his accomplishments during the time of the invoice. The worker had a schedule from 8:30 to 5:30. The worker performed his services at the location set by the firm and a small percentage from his home. The worker was required to attend meetings set by the firm. The worker was required to perform his services personally.

The firm provided the office equipment and supplies the worker needed to perform his services. The firm incurred the cost of the moving expenses for the worker to relocate. The worker was paid on a salary basis. The customers paid the firm for the services they received. The two parties came to an agreement on how much the worker would be paid.

The worker stated he would receive paid vacations, sick pay, holidays and personal days. Either party could terminate the work relationship without incurring a liability. The worker did not perform similar services for others at the same she performed services for the firm. The worker stated he was represented as a new employee and the firm stated they represented the worker as a contractor. The firm discharged the worker from his services due not being able to meet the firm's expectations.

Additional Information provided by both parties:

There was a copy of the worker's termination letter for services to be concluded on 2-24-2017.

The worker provided the decision from the state allotting the worker unemployment income.

The signed agreement between the two parties included the following:

1. It gave the individuals in the firm that he would be working under.
2. It outlined the worker's duties.
3. The worker would receive an annual salary of \$80,000 paid evenly over 24 payments. The payments would be made during the second and last week of the month.
4. There was a non-compete clause in the agreement.
5. The firm would reimburse the worker any work related expenses incurred by the worker.
6. The firm agreed to pay the worker's expense for lodging up to 60 days so he could have a place to stay with the relocation.
7. The firm maintained a right to terminate the worker with a 30 day notice.

There were invoices from the worker every two weeks for the same amount of \$3,080.

The worker received a two month severance package.

Analysis

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.

The statement that the worker was an independent contractor pursuant to a verbal 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.

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. In the instant case, the worker was trained by the firm to perform services according to the firm's needs which showed the worker's services were integrated into the firm's daily operations.

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. In the instant case, the worker was required to perform his services personally which showed the firm was interested in the methods used as well as the end results as an employer. This was further demonstrated by the fact the firm also required to the worker to attend staff meetings which showed the firm wanted the services performed in a specific manner.

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. In the instant case, the worker was paid on a salary basis which was outlined in the agreement between the two parties which showed financial control over the worker.

Lack of significant investment by a person in facilities or equipment used in performing services for another indicates dependence on the employer and, accordingly, the existence of an employer-employee relationship. The term "significant investment" does not include tools, instruments, and clothing commonly provided by employees in their trade; nor does it include education, experience, or training. In the instant case, the worker could not suffer a significant loss as operating their own business. In the instant case, the worker did not have a significant investment and was reimbursed any business out-of-pocket expenses.

The worker was an employee according to common law. The information provided by both parties showed the firm directed and controlled the worker in his services since the firm trained the worker, required the worker to work under other employees of the firm, and required to the worker to perform his services personally. The firm had financial control over the worker as the worker was paid on a salary basis, was reimbursed business out-of-pocket expenses incurred which also included the worker's relocation expenses. The fact the firm retained the right to discharge the worker demonstrated control through the threat of dismissal.

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 go to www.irs.gov for further information.

Firm: Publication 4341

Worker: Notice 989