

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 that provides personnel to oil and gas companies. The firm engage the worker to provide consulting services to energy companies to improve processes and procedures to eliminate risks. There was a written agreement between the two parties.

The worker was required to follow the instructions given by the firm's clients. The worker received the assignments from the firm's clients. The worker stated he relied upon the firm to resolve his problems and complaints and the firm stated the worker relied upon their client to resolve problems and complaints. The worker was required to submit timesheets for the services performed. The worker's hours were determined by the firm's client and the worker stated he worked 14 days on and then 14 days off. The worker performed the services at the firm's clients' locations. The worker was required to perform the services personally.

The worker provided a computer, supplies and materials needed to perform the services. The worker did not lease any space. The worker would be reimbursed approved expenses by the firm. The worker was paid a daily rate. The customers paid the firm directly for the services they received. The firm established the level of payment for the services performed.

The worker did not receive any benefits from the firm. Either party could terminate the work relationship without incurring a liability. The worker stated he did not perform similar services for others at the same time he performed services for the firm but the firm states the worker did perform similar services for others at the same time he performed services for the firm. The worker stated he was represented as an employee and the firm stated the worker was represented as an independent contractor. The worker stated he quit and the firm stated the contract ended.

The Consulting Agreement included the following:

The worker was engaged to provide specialized services and expertise enabling the firm to operate more efficiently and to improve its ability to provide the highest quality service to its customers and clients

The worker's services were described under the heading "Scope of Work"

The firm for it's convenience may terminate the agreement in whole or in part at any time

There was a 6 month non-compete after the termination of the contract

The worker covenants and agrees to abide by and comply with those policies and procedures as are or may be presented during the period of engagement

The worker had the right to challenge or refuse to work in unsafe conditions

Failure to comply with the policies and/or procedures outlined above may result in the immediate termination of the agreement at the sole discretion of the firm.

The worker would be paid \$650 per day with an increase to \$750 per day once final approval was received from the Client that services were performed.

The worker was required to submit approved timesheets and any expense reports with receipts

For Coaching Project all services rendered were deliverable at the firm's offices unless provided otherwise in writing

Copies of the worker's time sheets were submitted.

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 agreement between the two parties stated the worker was engaged to provide specialized services and expertise enabling the firm to operate more efficiently and to improve the firm's ability to provide the highest quality service to the firm's customers and clients. This demonstrated the worker's services were integrated into the firm's daily operations as an employee.

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 provide the services personally which demonstrated the firm was interested in the methods used as well as the end result as an employer. This was further demonstrated by the fact the worker was hired by the firm because he was qualified to provide the services the firm needed.

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 required to provide time sheets to the firm and the firm set the worker's daily rate of pay which demonstrated the firm retained financial control over the worker's services.

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.

The worker was an employee according to common law. The information provided by both parties showed the worker was assigned to one of the firm's clients and was required to follow instructions from that client in the performance of his duties which showed control over the worker. The fact the worker was required to submit timesheets demonstrated control over the worker. The fact the worker was reimbursed expenses on an accountable plan showed financial control over the worker. This was further demonstrated by the fact the firm set the worker's daily rate of pay. The fact the worker was hired by the firm to provide specialized services so the firm could operate more efficiently and to improve its ability to provide the highest quality service to its customers and clients demonstrated the worker's services were integrated into the firm's daily operations.

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