

SS-8 Determination—Determination for Public Inspection

Occupation 02COO Coordinators	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 the firm is a consultant business designed to inspire and support the sustainability of entrepreneurs and businesses through education, research, policy, and advocacy. The firm indicated the worker d/b/a Paloma Inspired Events was seasonally contracted to produce events for the firm in the fourth quarter. Both parties provided a copy of the independent contract agreement, listed the firm, signed by its owner and Paloma Inspired Events, signed by the worker as owner, and the 2017 1099-MISC document issued. The firm provided a copy of States Articles of Organization and the Certificate of Organization for the workers business. Although the worker stated she agreed to be an independent contractor at the inception of the work relationship, she feels the firm did in fact have complete control over the work relationship and feels she was an employee and was represented as such. She agreed she did have a business, but at the time she applied for the position, via resume and job interview, she was in fact homeless. The firm stated the worker received assignments in person and via business systems, including e-mail, phone, and Evernote. The firm indicated the worker determined how she performed those services. Both parties used the firm's event schedule to determine the contractor's schedule, which was irregular and based on other client commitments. The parties met on an as needed basis. The firm indicated they hired and paid for any subs required. The firm indicated no reports were required, but contract deliverables included marketing materials and event assistance. The firm stated they provided access to online systems and previously used event processes. The worker provided her own computer, software, relationships and experience. The firm indicated the worker was paid by the hour and the customer paid the firm. The firm indicated the contract rate was set by the firm, the worker did not negotiate. The firm stated the worker did perform services for other, their permission was not required. There was a non-solicitation provision in the contract. The firm stated she was represented as a contractor, operating on behalf of the firm. Both parties agreed the firm terminated the work relationship.

The worker stated she performed services as Marketing & Events Coordinator for the firm. She states although she agreed to an independent contract relationship, the work conditions were that of employer-employee relationship. The firm represented her in copied e-mails which listed her as a new team member of the firm as well as company business card representing her as their Marketing & Events Coordinator. The worker stated she submitted a resume and went for a job interview and worked on a probationary period. The worker indicated a training period was given (four hours posted on her timesheets reflects training). Objectives were outlined in the contract agreement, but additional assignments were added via e-mail, weekly debrief meetings were also added to a shared Evernote document. The worker stated verbal reports during those debriefings were required. Services were performed from various locations, which was strictly controlled by the firm. Her work schedule was controlled by the firm. She was required to check the Evernote system to find out where they were supposed to be meeting. (copies of e-mails were provided which discussed working from different locations one being the hospital, and another when the worker showed up for work and the location had been changed). Weekly meetings were held at the firm's office. The worker agreed the firm hired and paid all individuals. She agreed she provided her own laptop, if had not had one, the firm stated they would have provided one. The worker stated she incurred mileage expenses, which were not reimbursed. She agreed she was paid by the hour, the customer paid the firm. The worker stated she did not perform similar services for others. She was represented as a member of the firm. She agreed she was terminated by the firm. The worker has provided documentation of e-mails between parties, discussing the contract, work schedules etc.

ANALYSIS

The question of whether an individual is an independent contractor or an employee is one that is determined through consideration of the facts of a particular case along with the application of law and regulations for worker classification issues, known as "common law." Common law flows chiefly from court decisions and is a major part of the justice system of the United States. Under the common law, the treatment of a worker as an independent contractor or an employee originates from the legal definitions developed in the law and it depends on the payer's right to direct and control the worker in the performance of his or her duties. Section 3121(d)(2) of the Code provides that the term "employee" means any individual defined as an employee by using the usual common law rules.

Analysis

Analysis
continued..

The degree of importance of each factor varies depending on the occupation and the context in which the services are performed.

Therefore, your statement that the worker was an independent contractor pursuant to an agreement 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.

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.

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.

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 submitted a job resume' and went through a job interview, as herself, not as a company. She did not submit a bid for services at any time. The firm provided training and orientation. Time sheets were submitted in her name as Marketing Coordinator, not invoices from her company. Pay checks received were made out to the worker, not her company. She was paid at an hourly rate, several hundred dollars less than the rate of one job her company would have charged. Sufficiently documentation has been provided to show direction and control from the firm as to scheduling and other issues. The worker was represented as the newest "team member" directly by the firm and as requested by the worker's company business card addressing her as their Marketing and Events Coordinator.