

SS-8 Determination—Determination for Public Inspection

Occupation

02COO Coordinators

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**

It is our usual practice in cases of this type to solicit information from both parties involved. After the worker's initial filing of the Form SS-8, Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding, we requested information from the firm concerning this work relationship. The firm provided information in regard to this work relationship by completing Form SS-8.

From the information provided the firm is an internet platform matching lenders and borrowers anonymously and the worker was engaged under a written consulting agreement from June 2018 to July 2018 to make calls for interest vendors. The firm believes the worker was an independent contractor while performing services for them as the worker advertised his services as a caller for vendors and they hired his service to call vendors.

The firm provided the worker with the details and goals of their company. The worker received his assignments from in-house direction and goal setting from the firm and the firm states the worker determined how he completed his assignments. The worker was required to notify the firm if any problems or complaints arose for their resolution. The firm states the worker was required to submit a list of vendors to them. The firm's hours were from 8 a.m. to 5 p.m. Monday through Friday and the firm states the worker would come in during those hours to accomplish his goals. The worker was required to personally perform his services at the firm's premises. The hiring and paying of substitutes or helpers did not apply in this case.

The firm provided the phone, computer, paper, and pen to the worker in order to perform his services. The worker provided his knowledge and skill and the worker was compensated on a salary basis. The firm and the worker both agreed as to the level of payment for the services provided. The worker did not have an investment in a business related to services performed and therefore, he did not have an opportunity to incur a loss as a result of his services.

The worker did not perform similar services for others and he did not advertise his services. The firm states they represented the worker as a contractor. Either party could terminate the work relationship at any time without incurring a liability. The firm terminated the work relationship.

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.

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, the firm states the worker was experienced in this line of work and did not require training or detailed instructions from the firm. The need to direct and control a worker and his services should not be confused with the right to direct and control. The worker provided his services on behalf of and under the firm's business name rather than a business of his own. The worker was required to abide by the firm's policies and procedures manual. We believe the firm retained the right to direct and control the worker and his services to protect their financial investment, their business reputation, and their relationship with their clients.

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. There was no evidence presented or found in this investigation that indicates that the worker operated under a business name while performing services for the firm. The posting of one's availability to perform services on a third party's website is not considered having a business presence. Both parties retained the right to terminate the work relationship at any time without incurring a liability.

Section 31.3121(d)-1(a)(3) of the regulations provides that if the relationship of an employer and employee exists, the designation or description of the parties as anything other than that of employer and employee is immaterial. Thus, if an employer-employee relationship exists, any contractual designation of the employee as a partner, co-adventurer, agent, or independent contractor must be disregarded.

Therefore, the firm's 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. Both parties retained the right to terminate the work relationship at any time without incurring a liability.

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.