

SS-8 Determination—Determination for Public InspectionOccupation
02COO COODetermination:
☒ 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 worker initiated the request for a determination of her work status as an event facilitator, casino dealer, and as a program coordinator in tax years 2014 to 2019, for which she received Form 1099-MISC. In this capacity she facilitated events, provided office support, prepared budgets and proposals for clients, coordinated scheduling, sent event contract and invoices, wrote social media, created templates, coordinated with clients, performed research, etc. The firm's business is described as an event company.

The firm's response was signed by the owner. The firm's business is an event planning company and the worker provided services as casino dealer and team-building facilitator. She was hired to work specific events at specific locations based on her knowledge of the games she was able to deal.

The firm and worker acknowledged that the firm's owner provided training and instructions as to process and procedures; however, the casino training was from a previous company. The job assignments were sent via phone, email, text, or IM. The firm determined the methods by which the worker's services were performed; and, any problems or complaints encountered by the worker were directed to the firm for resolution. The worker responded that her services were rendered 10-15 hours per week on-call and at events as scheduled; about 50% at the venue and 50 % at her home office. The firm indicated the worker would be emailed as to an event for proposals, to see if she could put it together. The event was assigned to her to work if she was available or it was offered to someone else. The firm stated the services were rendered 80% at the worker's home and 20% at event. The worker was required to perform the services personally; any additional personnel were hired and paid by the firm.

The worker indicated the firm provided a laptop, an email address, computer programs, casino tables and accessories, and event equipment. The worker furnished nothing, but she incurred expense for gas and uniforms. The firm responded that the firm provided a keyboard and dual monitor for proposals and game tables and chips; and the worker furnished office space, computer, internet and electricity. Both parties concur the worker did not lease equipment, space, or a facility. The worker stated she was paid \$XX/week plus pay for each event; the firm indicated she was paid piece work. The customers paid the firm. The worker was not covered under the firm's workers' compensation insurance policy. The worker was not at risk for a financial loss in this work relationship. The firm established the level of payment for services provided.

The firm indicated there were no benefits available to the worker; the worker stated the benefits extended to her were personal days and bonuses. Either party could terminate the work relationship without incurring a liability or penalty. The firm stated the worker was performing same or similar services for others during the same time frame; the worker disagreed. The firm indicated that the completed documents were uploaded to the firm's system. The work relationship ended in 2019.

Analysis

A worker who is required to comply with another person's instructions about when, where, and how he or she is to work is ordinarily an employee. This control factor is present if the person or persons for whom the services are performed have the right to require compliance with instructions. Some employees may work without receiving instructions because they are highly proficient and conscientious workers or because the duties are so simple or familiar to them. Furthermore, the instructions, that show how to reach the desired results, may have been oral and given only once at the beginning of the relationship.

Training a worker by requiring an experienced employee to work with the worker, by corresponding with the worker, by requiring the worker to attend meetings, or by using other methods, indicates that the person or persons for whom the services are performed want the services performed in a particular method or manner. This is true even if the training was only given once at the beginning of the work relationship.

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.

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. Also, workers are assumed to be employees if they are guaranteed a minimum salary or are given a drawing account of a specified amount that need not be repaid when it exceeds earnings.

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. Also, if the firm has the right to control the equipment, it is unlikely the worker had an investment in facilities.

A person who can realize a profit or suffer a loss as a result of his or her services is generally an independent contractor, while the person who cannot is an employee. "Profit or loss" implies the use of capital by a person in an independent business of his or her own. The risk that a worker will not receive payment for his or her services, however, is common to both independent contractors and employees and, thus, does not constitute a sufficient economic risk to support treatment as an independent contractor. If a worker loses payment from the firm's customer for poor work, the firm shares the risk of such loss. Control of the firm over the worker would be necessary in order to reduce the risk of financial loss to the firm. The opportunity for higher earnings or of gain or loss from a commission arrangement is not considered profit or loss.

We have considered the information provided by both parties to this work relationship. In this case, the firm retained the right to change the worker's methods and to direct the worker to the extent necessary to protect its financial investment and business reputation and to ensure its customers' satisfaction and that its contractual obligations were met. The worker was not operating a separate and distinct business; 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. 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 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 the firm's business.

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.