

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**

The worker initiated the request for a determination of her work status as an event manager in tax year 2018, for which she received Form 1099-MISC. The firm's business is described as traveling book fair and gift sales at businesses, offices, and hospitals. She set up the fair, worked as cashier, and tore everything down. The worker stated she worked for one business.

The firm's response was signed by the owner. The firm's business is hosting fund-raising events at various businesses. The worker was an intern/event coordinator, marketing and sales. The firm stated there was an acquisition/purchase of the business on October 22, 2018.

The worker stated the previous owner trained her and the new owner/the firm at the same time. The job assignments were scheduled or approved by the firm. The firm determined the methods by which the worker's services were performed. Any problems or complaints encountered by the worker were directed to the firm for resolution. The worker provided reports which consisted of counts of the inventory and a list of the customer's/event holder's employees that wanted purchases deducted from payroll. The worker's services were rendered at offices and hospitals, generally 6-9 hours per day, and were 1 to 2 day events. The worker was required to perform the services personally; any additional personnel were hired and paid by the firm.

According to the firm, it was unknown as to the worker's training and/or instructions; the firm's owner stated the worker trained him. The job assignments were per the worker's marketing arrangements. The worker would stay in contact with the firm and the worker would resolve the problems or complaints encountered. The worker provided hand-written copies of work performed and the firm's owner was cc'd on emails. The worker's services were rendered at customer locations and 10% at her home. 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 all materials and supplies; and, that she furnished nothing and was reimbursed at \$.30/mile. The worker did not lease equipment, space, or a facility. The firm paid the worker an hourly wage; and, the customers paid the worker who remitted the entire amount to the firm. The worker was not covered under the firm's workers' compensation insurance policy. The worker replied that she was not at risk for a financial loss in this work relationship. She stated the firm's owner and previous owner established the level of payment for the services provided and products sold.

The firm acknowledged providing the worker with a laptop at events and a schedule book; and, indicated the worker furnished a cellphone and a computer at home. The worker incurred the expenses for travel but was reimbursed by the firm. The worker did not lease equipment, space, or a facility. The worker submitted her time and was paid an hourly wage on a weekly basis. The customers paid the firm. The worker was not covered under the firm's workers' compensation insurance policy. The worker was at risk for a financial loss in this work relationship because of the phone, computer, and her vehicle. The worker established the level of payment for the services provided and/or products sold.

Both parties concur that no benefits were extended to the worker and that either party could terminate the work relationship without incurring a liability or penalty. The worker was not performing same or similar services for others during the same time frame. The firm provided leads to prospective customers and the worker sent out emails. The worker indicated all orders were subject to the firm's approval; the firm disagreed. The firm determined the worker's territory. The work relationship ceased in late November/early December of 2018.

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.

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.

A requirement that the worker submit regular or written reports to the person or persons for whom the services are performed indicates a degree of control.

If the person or persons for whom the services are performed ordinarily pay the worker's business and/or traveling expenses, the worker is ordinarily an employee. An employer, to be able to control expenses, generally retains the right to regulate and direct the worker's business activities.

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.

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

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 see www.irs.gov for more information including Publication 4341 Information Guide for Employers Filing Form 941 or Form 944 Frequently Asked Questions about the Reclassification of Workers as Employees and Publication 15 (Circular E) Employer's Tax Guide.