

SS-8 Determination—Determination for Public Inspection

Occupation

02COO Office Coordinator

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 payer is an individual that engaged the worker as an office co-coordinator from 01/2019 to 08/2019. The payer is a family doctor. The payer stated the worker was hired to help catch up on organizing and filing records. The work was project based. She had the freedom to perform the services on her schedule. She worked inconsistent hours. He feels that for the above-mentioned reasons his treatment of the worker as an independent contractor was correct. The worker had previously performed similar services for the payer in 2016 and 2017. While performing internal research, evidence was found the worker had received a FORM W2 for each of the prior years in which she had performed similar services for the payer. The worker submitted a Form SS-8 after received a Form 1099-Misc from the firm. The firm replied with a Form SS-8.

The worker stated she received on the job training. According to the payer, the worker was shown procedures to help with consistency. She would receive her work assignments for the payer. The methods by which those assignments were performed were determined by the payer. Both parties agree the payer was responsible for problem resolution. She detailed her daily routine as she would punch in at 7:45 am. She would then take an hour for lunch, then resume her duties until the office closed. She would do this Monday-Thursday. On occasion she would also work on Fridays. However, the payer stated the worker could set her own schedule during the office's normal business hours. The worker performed her services 98% on the firm's premises and 2% at her home. According to the payer, all work was done on the payer's premises. She received regular remunerations for her services. The worker stated she was required to attend daily morning meetings and a monthly staff meeting. However, the payer specified meetings were not required of the worker. The relationship between the parties was continuous, as opposed to a one-time transaction. The nature of this relationship contemplated that the worker would perform the services personally. The worker worked exclusively and on a continuing basis for the firm. Her services were an integral and necessary part of the services the payer provided to its customers. The payer would hire and pay any substitutes or helpers.

The payer furnished the worker with office space and equipment, at no expense to her. The worker did not lease equipment. The payer determined the fees to be charged. According to the payer, the worker did not incur any significant business expenses in the performance of her services. The worker was paid an hourly wage. The payer did not allow the worker a drawing account, or advances against anticipated earnings. The payer's customers paid the payer. The payer did not carry worker's compensation insurance on the worker. The worker did not have a substantial investment in equipment or facilities used in the work and did not assume the usual business risks of an independent enterprise.

The worker was not eligible for sick pay, vacation pay, health insurance, or bonuses. Either party could terminate the work relationship at any time without incurring a penalty or liability. The worker was not a member of a union. All work produced became the property of the payer. According to internal research, the worker did not perform similar services for others. She did not advertise her services to the public, or maintain an office, shop, or other place of business. She was required to perform the services under the name of the firm and for the firm's customers. The relationship between the parties ended when the worker resigned.

The information submitted on the Form SS-8 and the internal research conducted provided enough information to provide a determination for this case. The facts of the case indicate that the firm had the right to control the worker.

Analysis

In determining whether an individual is an employee or an independent contractor under the common law, all evidence of both control and lack of control or independence must be considered. We must examine the relationship of the worker and the business. We consider facts that show a right to direct or control how the worker performs the specific tasks for which he or she is hired, who controls the financial aspects of the worker's activities, and how the parties perceive their relationship. The degree of importance of each factor varies depending on the occupation and the context in which the services are performed.

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.

A continuing relationship between the worker and the person or persons for whom the services are performed indicates that an employer-employee relationship exists. A continuing relationship may exist where work is performed in frequently recurring although irregular intervals

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.

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.

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, both parties retained the right to terminate the work relationship at any time without incurring a liability.

Based on the common-law principles, the payer had the right to direct and control the worker. The worker shall be found to be an employee for Federal tax purposes.

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.