

SS-8 Determination—Determination for Public Inspection

Occupation

Business/Computer Services/Office/Sales

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 firm is a free travel website that engaged the worker as a web designer in 2015. During this time, the worker was responsible as the firms' website administrator performing services such as edit, color code, and upload text and photographs to the firm's website, in addition to upgrading the overall design of the firm's website. She received the Form 1099-MISC in 2015 for these services.

The worker was instructed by the firm's original website administrator on the basic functionality of the website and how to accomplish the assigned tasks. The firm contends that the worker was largely free to perform the firm's work however she saw fit. The worker received her assignments via email from the firm and the firm determined the methods by which the assignments were performed. The firm believes that the worker determined the methods by which the assignments were performed. The firm required the worker to submit verification that the work was completed and the number of hours worked. The worker stated that she was told by the firm to work Monday through Friday during normal business hours. The firm stated that they did restrict the workers total number of hours worked. The worker reported that she was occasionally required to discuss work issues/upgrades on the telephone or to receive further instruction from the firm. The worker provided her services personally from her home. If additional help was required the firm indicated that the worker was responsible for paying these individuals.

According to the worker, the firm provided the [REDACTED] software needed while she provided her laptop, to provide her services for the firm. The firm suggested that they did not provide the worker with supplies, materials or equipment. The worker did not lease any equipment nor were any business expenses incurred in the performance of her services. The worker received an hourly wage for her services. The firm believes that the worker was paid piecework for her services. The worker stated that the firm's customers paid the firm for the services the worker provided, while the firm replied that neither the firm or the worker were paid by the firm's customers. Although the firm stated the website is free, the firm established the level of payment for the services the worker provided. The worker did not assume any financial risk in the relationship.

The firm did not make any benefits available to the worker. The worker did perform similar services for others during the same time period. The worker provided her services under the firm's business name. Both the firm and the worker submitted emails which indicated her services being performed under the firm's business name. Both parties retained the right to terminate the relationship without incurring liability.

Analysis

FINDING: Employee: The application of the three categories of common law evidence to the available facts of the relationship indicates that the firm retained the right to direct and control the worker in the performance of her services. Accordingly, the worker was an employee of the firm for purposes of Federal employment taxes.

Worker status is not something to be selected by either the firm or the worker. Worker status is determined by the examination of the actual working relationship as applied to Internal Revenue Service code.

Hence, to clarify the Federal Government's position on worker status, we will be determining this case based on their common law practices in which the actual relationship between the parties is the controlling factor.

The firm instructed the worker regarding the performance of her services. 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. The firm retained the right, if necessary to protect their business interest, to determine or change the methods used by the worker to perform her assignments. The facts show that the worker was subject to certain restraints and conditions that were indicative of the firm's control over the worker. 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. The worker had a continuous relationship with the firm as opposed to a single transaction. The worker rendered her services personally. 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. The worker's services were under the firm's supervision.

The firm provided the worker with the necessary equipment and materials. Her pay was base on an hourly rate. 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. The worker could not have incurred a loss in the performance of her services for the firm, and did not have any financial investment in a business related to the services performed.

The worker worked under the firm's name, and her work was integral to the firm's business operation. The above facts do not reflect a business presence for the worker, but rather, strongly reflect the firm's business. The fact that the worker was not closely monitored would not carry sufficient weight to reflect a business presence for the worker. In fact, many individuals are hired due to their expertise or conscientious work habits and close supervision is often not necessary. The right to discharge a worker is a factor indicating that the worker is an employee and the person possessing the right is an employer. An employer exercises control through the threat of dismissal, which causes the worker to obey the employer's instructions. An independent contractor, on the other hand, cannot be fired so long as the independent contractor produces a result that meets the contract specifications. In fact the firm advised that they fired the worker. Either the firm or the worker could terminate the agreement.

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