

SS-8 Determination—Determination for Public Inspection

Occupation

02CSP Computer Services Personnel

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 organization is a non-profit organization operating thrift stores and social media. The organization engaged the worker to assist them with a website and to upload items for sale at the organization's thrift stores. There was a "Memorandum of Understanding" (MOU) between the two parties.

The worker stated she received instructions at weekly meetings. The organization stated the worker performed services unsupervised. The worker stated she received her assignments from the Deputy Director and the Retail Stores Directors. The worker relied upon the store Operations Manager. Both the organization and worker stated she had a specific schedule. The worker either performed her services at the organization's location or at a store front. The worker was required to attend weekly sales meetings. The worker was required to perform her services personally.

The organization provided the space, all technology, cameras and all supplies the worker needed to perform her services. All work related expenses incurred by the worker was reimbursed by the organization. The worker was reimbursed for gas when she went from store to store using her own vehicle. The worker was paid on an hourly basis. The customers paid the organization for the products they received. Part of the worker's services were to set the price of the items for the organization to sell; however, the organization retained the right to reduce the price if necessary.

The worker did not receive any benefits. Either party could terminate the work relationship without incurring a liability. The worker did not perform similar services for others at the same time she performed services for the organization. The worker performed her services under the organization's business name. The organization stated they offered the worker an employee status and at that time the worker terminated her work relationship with the organization.

The MOU included the following:

The organization wanted to explore the viability of an online jewelry store.

The organization will provide a fully-equipped workspace

The organization will provide access to donated jewelry for evaluation

Organization will pay worker \$25/hour with 14 day receipt provided every two weeks

Worker was to submit invoices the first and third Fridays every two weeks

The worker was to evaluate, price, photograph, post jewelry online, prepare shipping & respond to all online inquiries

Provide guidance and reports as requested on the success or challenges of pilot

The worker provided copies of her [REDACTED] (timesheet)

On some of the timesheets there were work related expenses incurred by the worker to be reimbursed by the organization

There were emails from the worker to other employees giving instructions on duties they needed to perform

An email from the worker to the organization requesting the organization to list a job posting as she needed another assistant.

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.

The statement that the worker was an independent contractor pursuant to a verbal 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.

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 the instant case, the worker created a website for the organization and uploaded the organization's items for sale through the organization's thrift stores which demonstrated the worker's services were integrated into the organization's daily operations of their thrift stores.

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. In the instant case, the worker was required to perform her services personally which demonstrated the organization was interested in the methods used as well as the end result. This was further demonstrated when the worker was required to oversee worker's that were assisting her in uploading the items to the organization's site.

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 organization 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 organization has the right to direct and control the performance of the workers. In the instant case, the organization set the worker's hourly rate of pay in the MOU between the two parties.

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. In the instant case, the worker could not suffer a significant loss as operating her own business.

The worker was an employee according to common law. The information provided by both parties showed the worker did get her assignments from the organization. The worker was hired by the organization according to her experience in this industry and did not need daily supervision. The fact the worker was required to perform her services personally demonstrated the organization was interested in the methods used as well as the end results. The organization was the entity that had the financial investment as the organization provided the worker with all of the equipment and supplies she needed to perform her services. The organization also reimbursed the worker for all work related expenses and gas the worker used going from location to location. Financial control was also demonstrated by the organization setting the worker's hourly rate of pay in the "Memorandum of Understanding." The worker photographed the organization's items to upload to a website under the organization's business name which demonstrated the worker's services were integrated into the organization's daily operations.

Based on the above analysis, we conclude that the organization 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 go to www.irs.gov for further information.

Organization: Publication 4341
Worker: Notice 989