

SS-8 Determination—Determination for Public Inspection

Occupation

02CSP Quality Analyst

UILC

Determination:

☒ Employee

☐ Contractor

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 in the business of providing software consulting services. The worker was engaged to perform quality assurance testing tasks for the firm's client. He received a 2017 Form 1099-MISC for his services and continued to work into 2018 as well. There was a written offer letter.

Both the firm and the worker agreed that there was required training needed by the worker to provide his services; the firm paid for some of the training. The worker received his work assignments via a collaboration hub for team meetings or verbally; the firm noted work assignments were defined by their client's software systems. Each party indicated that the other determined the methods by which the assignments were performed. The firm or its client would be contacted if any issues or problems arose. The worker submitted daily updates during meetings. The firm indicated that the worker had a daily list of work; however the worker noted that there were set scheduled work hours. Both parties agreed that the worker worked at the firm's office and from his home. There were meetings to attend. Both agreed that the worker was required to provide the services personally.

Both the firm and the worker noted that the firm provided a computer. The worker noted that he supplied a mouse, a keyboard and incurred internet expenses when home and for online training. Both parties also agreed that he was paid an hourly rate; the firm included that he received a pay stipend for a pre-arranged absence. The customer paid the firm. The worker did not establish the level of payment for services.

According to the firm, there were no benefits other than the stipend for a pre-arranged absence. The worker mentioned paid vacation, personal days, paid holidays. Either party could terminate the relationship without incurring a liability. The worker did not perform similar services for others. The relationship has ended.

The firm's Contract Term Sheet offered the worker a position as a [REDACTED], for a defined period of time which could be extended dependent on available work and the worker's performance. It outlined a compensation plan dependent on completing training curriculum and noted that the worker would be paid for requested time off. The Sheet addressed the fact that the worker's work performance directly affects the firm's client relationship.

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. The relationship of the worker and the business must be examined. 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 should be considered. 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.

Factors that illustrate whether there is a right to control how a worker performs a task include training and instructions. 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. The firm engaged the worker to perform services for its client. The firm obtained the client and remained responsible. The firm provided the worker with the necessary training. 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. The firm also instructed the worker to report to certain designated individuals. From evidence provided, the worker was expected to work thirty to forty hours a week. So although he might not have worked the same set scheduled hours, if the nature of the occupation makes fixed hours impractical, a requirement that workers be on the job at certain times is an element of control. He worked at the firm's office and at his home. Note that if the work is performed on the premises of the person or persons for whom the services are performed, that factor suggests control over the worker, especially if the work could be done elsewhere. Work done off the premises of the person or persons receiving the services, such as at the office of the worker, indicates some freedom from control. However, this fact by itself does not mean that the worker is not an employee. The importance of this factor depends on the nature of the service involved and the extent to which an employer generally would require that employees perform such services on the employer's premises. The worker's services were continuous over the period of time involved. 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.

Factors that illustrate whether there is a right to direct and control the financial aspects of the worker's activities include significant investment, unreimbursed expenses, the methods of payment, and the opportunity for profit or loss. In this case, 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. The worker had no other economic risk other than the loss of his hourly compensation. 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.

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. There was an employee-type benefit as well as a written agreement. The worker was engaged to provide his services for the firm's consulting operations. When doing so, the worker was not engaged in a separate business venture. The fact that his services were for a limited time did not, by itself, make him self-employed. 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.

Based on the above analysis, we conclude that the firm had the right to exercise direction and control over the worker for the entire work relationship 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 Publication 4341 for guidance and instructions for firm compliance.