

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 submitted a Form SS-8 for services performed by the worker for them as a Senior Software Developer from January 2025 until July 2025. The firm filed a Form SS-8 because they believe that the worker should be classified as an Independent Contractor.

The worker states that they were an employee of the firm because they worked a full-time schedule, worked under the direction of the firm, paid a monthly salary and had to follow the code rules of the firm. There were no oral agreements between the parties. The written agreement between the parties was that the worker would perform at-will job duties, receive a salary, travel reimbursement, along with conduct and attendance requirements.

The firm states that they are a software solutions business for digital asset infrastructures. The firm hired the worker as a Senior Software Developer. The firm provided the worker with an at-will contract. The firm classified the worker as an independent contractor because the worker was to perform "services provided" for compensation. There were no oral agreements between the parties. The written agreement between the parties was that the worker would receive contract payment for services provided on a regular basis.

The firm states that the worker did not receive any instructions or training. The firm owner gave the worker job assignments by email and job apps. The firm determined the methods by which job duties were completed. If the worker encountered any problems or complaints while working, they were required to contact the firm owner. The firm owner would be responsible for problem resolution. The firm did require the worker to complete reports. The worker completed software development functions as available 100% at the workers office. The firm did require the worker to attend staff meetings, but the worker would not be penalized if not in attendance. The firm required the worker to provide services personally but had no hiring authority.

The worker states that they received work instructions daily. The firm owner gave the worker job assignments by email, phone and job apps, and determined the methods by which job duties were performed. If any problems or complaints were to arise, the firm owner was to be contacted. The firm owner was responsible for resolutions. There were reports required of the worker. Software development services were performed, full time, 100% remotely. The worker was required to attend mandatory staff meetings and would be penalized for not attending by termination for lack of attendance. The firm required the worker to personally perform services. The worker had no hiring authority.

The firm states that they or the worker did not provide any supplies or materials. The worker did not provide or lease anything. The worker did incur job-related expense such as travel. The firm reimbursed expenses. The firm paid the worker a bi-weekly salary. The firm did not give the worker access to advance pay. Customers paid the firm. The firm did not carry worker's compensation insurance on the worker. The worker did not take a financial risk or suffer a financial loss while working for the firm. The firm set the rate of pay for services performed and the product price. The worker states that the firm provided corporate emails, Asana accounts and funds for maintenance. The worker provided their computer and internet. The worker incurred travel expenses that were reimbursed by the firm. The firm paid the worker a salary pay. Customers paid the firm. The worker had no exposure to financial risk or loss.

The firm states that they did not provide benefits to the worker. The firm or worker could end the work relationship without incurring penalty. The worker did not perform similar services for other firms. There was a non-compete agreement in place between the parties. The worker did not advertise their services to the public. The worker did produce software development at home that was returned to the firm. The firm did not introduce the worker to its customers. The worker ended the work relationship.

The worker states that there were no benefits provided to them by the firm. The worker did not assemble products at home. The firm introduced the worker to its customers as the Senior Developer and CTO. Services were performed under the firm's name. The worker ended the work relationship due to 4 months of nonpayment.

Analysis

The question of whether an individual is an independent contractor or an employee is one that is determined through consideration of the facts of a particular case along with the application of law and regulations for worker classification issues, known as “common law.”

Generally, the relationship of employer and employee exists when the person for whom the services are performed has the right to control and direct the individual who performs the services, not only as to what is to be done, but also how it is to be done. It is not necessary that the employer actually direct or control the individual, it is sufficient if he or she has the right to do so.

Section 31.3121(d)-1(a)(3) of the regulations provides that if the relationship of an employer and employee exists, the designation or description of the parties as anything other than that of employer and employee is immaterial. Thus, if an employer-employee relationship exists, any contractual designation of the employee as a partner, co-adventurer, agent, or independent contractor must be disregarded.

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. 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. Furthermore, whether there is an employment relationship is a question of fact and not subject to negotiation between the parties.

The term “full-time” may vary with the intent of the parties and the nature of the occupation since it does not necessarily mean working an eight hour day or a five or six day week. If the worker must devote substantially full-time to the business of the person or persons for whom the services are performed, such person or persons have control over the amount of time the worker spends working and, therefore, the worker is restricted from doing other gainful work. An independent contractor, on the other hand, is free to work when and for whom he or she chooses.

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.

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.

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.

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.

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, 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. Both parties retained the right to terminate the work relationship at any time without incurring a liability. There is no evidence to suggest the worker performed similar services for others as an independent contractor or advertised business services to the general public during the term of this work relationship. The classification of a worker as an independent contractor should not be based primarily on the fact that a worker’s services may be used on a temporary, part-time, or as-needed basis. As noted above, common law factors are considered when examining the worker classification issue.

Based on the above analysis, 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.

The firm can obtain additional information related to worker classification online at www.irs.gov; Publication 4341.