

SS-8 Determination—Determination for Public Inspection

Occupation

02ENG Audio Engineer

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 in the business of producing audio books in a recording studio. The worker was initially engaged as an on-call engineer; then in 2016 and 2017, he was engaged as the Studio Manager. The worker received a Form 1099-MISC for his services in 2013 through 2016 as well as a Form W2 in 2016 and 2017. There was no written agreement.

The firm indicated that no training was provided. However, the worker noted that every facet of his position as engineer, quality controller, or editor was dictated by the firm who provided templates and instructional materials. The worker noted that he received his work assignments, audio book projects, by the firm through emails. Each party indicated that the other determined the methods by which the assignments were performed. The firm noted that its production director would be contacted if any issues or problems arose but that the worker would provide the resolution. Both parties agreed that the worker was to submit session reports as well as others. The firm noted that the worker and narrator had to be on the same schedule; the worker noted that he reported to work as scheduled by the firm. He filled out reports, set record levels according to firm's specs, recorded audio books with the assigned narrator, performed unscheduled pick-up sessions and delivered recordings to the server. The firm noted that all work was performed at its location. There was disagreement on whether there were meetings. Both parties agreed that the worker was to provide the services personally.

Both the firm and the worker agreed that the firm provided all equipment with the worker including reports, scripts, computers, mics, preamps, ipads, etc. Both parties agreed that the worker was paid by the hour as an engineer; quality controllers and editors are paid by the project, according to the worker. He also noted that he would not be compensated if the narrator did not show up or left early. The customer paid the firm. Each indicated that the other established the level of payment for services.

Both the firm and the worker agreed that there were no benefits and that either party could terminate the relationship without incurring a liability. The worker did not perform similar services for others though the firm disagreed. The worker was represented as an employee to all the firm's clientele. The relationship ended when the firm fired him from his studio manager (employee) position.

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. It is acknowledged that the worker was engaged for his skills; however, from evidence provided, there were detailed instructions from the firm. The firm obtained audio book projects, scheduled the narrators, and then, engaged audio engineers for the studio recording. While the worker may not have had set scheduled hours, he had to be there when the narrator was scheduled to be there. The establishment of set hours of work by the person or persons for whom the services are performed is a factor indicating control; however, 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.

According to evidence provided, the worker performed other services as well prior to his employee status with the firm. His invoices noted janitor and front desk activities, as well as his services as an engineer. The worker reported to the firm's premises to provide all services and utilized the firm's studio and equipment. 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. In addition, the worker provided his services on a continuous basis throughout the time period 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. It was the firm that had the investment in the studio and equipment. The worker did not pay for the use of the studio or equipment. The worker was paid by the hour and had no other economic risk. 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 were no benefits and there was no written agreement. The worker was initially engaged to provide services as an audio engineer for the firm's audio studio. When doing so, the worker was not engaged in an separate business venture. His duties evolved to include maintenance of the firm's studio as well as front desk duties. All of his services were essential and necessary for the firm's continuing operations. 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 firm indicated that the worker worked for others as well as for the firm. If a worker performs more than de minimis services for a multiple of unrelated persons or firms at the same time, that factor generally indicates that the worker is an independent contractor. However, it is possible for a person to work for a number of people or firms concurrently and be an employee of one or all of them.

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.