

SS-8 Determination—Determination for Public Inspection

Occupation

02LAW Law Staff

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 professional corporation operating a law firm. The firm engaged the worker as an attorney. There was no written agreement between the two parties. The worker was approached by the firm to assist the firm in handling court cases.

The worker received instructions of when to appear for the court date. The worker received what hearings he could attend via email. The firm stated the worker was a licensed attorney and would take up any problems he had with the Judge and/or State Bar of California. The worker stated he relied upon the firm or manager. The worker summarized what happened at the court hearing and notified the firm of the next hearing. The worker's schedule was dependent upon the court hearings. The worker performed his services at a court where the hearings were held. The worker would provide the firm with the hearing results. The worker was required to perform his services personally.

The firm contends they did not provide the worker with anything he needed to perform his services and the worker stated the firm provided with an office and a computer. The worker incurs gas and parking expenses. The worker was paid on a piece work situation. The clients paid the firm directly. The worker invoiced the firm for his services.

The worker received no benefits from the firm. Either party could terminate the work relationship without incurring a liability. The worker did perform similar services for others at the same time he performed services for the firm. The worker relationship ended because there was a billing dispute.

The worker provided us with a copy of a business card with his name as attorney at law with the firm's name, address and phone and fax numbers. The worker provided us with a copy of a Weekly Appearance List from April 2017 to October 2017. The worker provided us with a copy of an invoice.

The firm provided us with a copy of the attorneys in motion web page that the firm stated listed the worker as one of the attorneys. The firm provided a copy of a website that lists the worker as party of another law firm. There was an email requesting the worker to appear on the behalf of the firm on a court case. The firm provided copies of emails between them and the worker regarding a payment issue between the two parties.

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.

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 attended court cases assigned by the firm under the firm's business name which demonstrated the worker's services were integrated into the firm's daily operations.

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 firm had observed the worker in a court background and engaged him to perform services for his office which showed the firm was interested in the methods used as well as the end results. This was further demonstrated by the fact the worker was then required to report back to the firm on the results of the case.

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. In the instant case, there was an email that stated the worker would be paid specific amounts according to whether or not he had cases in separate buildings or in the same building.

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 their own business.

The worker was an employee according to common law. The information provided by both parties showed the worker received his assignments from the firm and was instructed where to perform those services. The worker was required to perform his services personally which showed the firm was interested in the methods used as well as the end result as an employer. The worker did not have a significant investment in the services he performed as the firm provided the worker with an office and office equipment to provide his services. The firm had the financial risk and suffer a significant loss as the firm was responsible to collect the amount they charged their customers and paid the worker by the case he was assigned. The fact the worker handled court cases that were assigned to him under the firm's business name which demonstrated the worker's services were integrated into the firm's daily operations of their business.

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.

Please go to www.irs.gov for further information.

Firm: Publication 4341

Worker: Notice 989