

SS-8 Determination—Determination for Public Inspection

Occupation

02LAW Legal Assistant

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

Information provided indicated the firm is an operating law practice. The worker indicated she performed services as a legal assistant for the firm for tax years 2014 through 2016. The firm reported income earned on Form 1099-MISC, stating she worked sporadically and set her own hours. The firm stated she could render services at any time for others, and they did not oversee the work only confirmed completion. Minimal guidance was given by the firm. Work assignments were verbally from the firm. All work was performed on firm premises, utilizing the firm's equipment and supplies. The firm indicated the worker was paid on a piece work basis. They indicated the clients paid the firm for services received. The firm indicated the worker advised she could no longer work.

The worker indicated she was told the time of arrival and departure. She was provided sample letters as templates to create documents for signature. The worker stated she was given a list of tasks to perform either verbally, via e-mail, incoming mail, etc. The worker indicated she performed services Monday through Friday nine-thirty to six p.m. The worker agreed the firm provided all equipment and supplies. She indicated she was paid on salary, via weekly payments made on Fridays. The worker indicated she was represented as an assistant of the firm. The worker stated she was terminated by the firm.

Analysis

We have applied the above law to the information submitted. 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.

Evidence of control generally falls into three categories: behavioral control, financial control, and relationship of the parties, which are collectively referred to as the categories of evidence. In weighing the evidence, careful consideration has been given to the factors outlined below.

Factors that illustrate whether there is a right to control how a worker performs a task include training and instructions. In this case, you retained the right to change the worker's methods and to direct the worker to the extent necessary to protect your financial investment. 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. A worker who is required to comply with another person's instructions about when, where, and how he or she is to work is ordinarily an employee. Those instructions, that show how to reach the desired results, may have been oral and given only once at the beginning of the relationship.

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 firm provided the work space, it was not rented by the worker, and all equipment and supplies to perform her services.

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 your business. Both parties retained the right to terminate the work relationship at any time without incurring a liability.

CONCLUSION

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. No evidence was found or provided by the firm to show proof the worker owned and operated her own business to provide the services rendered. All services were performed on the firm premises, under the firm's business name. Services could also have been performed on a part time, continuing basis (as indicated by the firm). That does not make a person an independent contractor. Whether paid by salary, by the hour, or by piece work, the worker was not in a position to incur a profit or suffer a financial loss.