

SS-8 Determination—Determination for Public Inspection

Occupation

02OFF Office Workers

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 worker submitted a request for a determination of worker status in regard to services performed for the payer from March 2016 to August 2016 as an interim law librarian. The work done by the worker included overseeing the operation of the law library; ensuring the efficient operation of the library according to policies and procedures set forth by the library board; communicating with patrons, resolving problems, explaining procedures, and assisting with computer usage and location of resource materials; maintaining, organizing, and tracking inventory of materials, equipment, and supplies; scheduling use of the conference rooms; receiving and recording updates and supplements to the legal reference material; collecting and accounting for fees assessed by the library for copying, printing, etc.; approving library invoices for library vendors and supply vendors. The payer issued the worker Form 1099-MISC for the year in question. The worker filed Form SS-8 as she believes she erroneously received Form 1099-MISC.

The payer's response states its business is the operation of the law library pursuant to state code. The worker was engaged as an interim law librarian to perform the duties of the librarian in the courthouse law library. The worker was classified as an independent contractor as she was hired on a contract basis for a temporary assignment.

The payer stated the worker was shown the location of resources and general administrative procedures. The worker was hired to run the library until the permanent librarian was hired. The library board determined the methods by which assignments were performed. The court administrator, secretary-treasurer of the library board, was contacted if problems or complaints arose. The court administrator was responsible for problem resolution. Reports and meetings were not required. The worker's daily routine consisted of general library management and monitoring; Monday through Friday, 8:30 am to 4:30 pm. Services were performed in the courthouse law library. The payer required the worker to personally perform services. The library board hired and paid for substitutes or helpers. The worker stated she was initially provided training and received daily instruction from the court administrator. During training, she was given a copy of the payer's policies and procedures manual. She, in conjunction with the fiscal officer, was responsible for reporting on fees collected. Financial information was entered into an Excel spreadsheet which was emailed to the fiscal officer each month.

The payer stated it provided all supplies, equipment, and materials. The worker did not lease equipment, space, or a facility. The worker did not incur expenses in the performance of services for the payer. The payer paid the worker an hourly rate of pay. The payer did not carry workers' compensation insurance on the worker. The worker established the level of payment for the services provided. The worker stated she was not allowed a drawing account for advances. She did not incur economic loss or financial risk. The court administrator determined the level of payment for the services provided.

The payer stated the work relationship could be terminated by either party without liability or penalty. The worker did not perform similar services for others. It is unknown if the worker advertised. The payer did not represent the worker to others. The work relationship ended when the job was completed. The worker stated benefits were not provided. She did not advertise. The payer represented her as its interim librarian.

The written independent contractor agreement states, in part, the library board wished to engage the worker on an interim basis to act as the librarian. The worker was identified as a qualified librarian with related experience. The term was established as two months, ending May 20, 2016. The worker's duties included working and cooperating with the board; performing services on a regularly scheduled basis; cooperating fully with the board in the ongoing review of her performance. The worker would be paid an hourly rate of pay. Invoices would be paid within five days of receipt by the board. Being a personal services contract, the worker could not assign the agreement, or any part of the agreement, or any of her duties or obligations without the board's prior written approval. The board was free to assign the agreement.

Analysis

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, coadventurer, agent, or independent contractor must be disregarded.

Therefore, the payer's statement that the worker was an independent contractor pursuant to a written agreement is without merit. 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.

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 this case, the payer required the worker to personally perform services. Furthermore, the services performed by the worker were integral to the payer's business operation. The payer provided instruction, determined the methods by which assignments were performed, and assumed responsibility for problem resolution. These facts evidence the payer retained the right to direct and control the worker to the extent necessary to ensure satisfactory job performance in a manner acceptable to the payer. Based on the worker's education, past work experience, and work ethic the payer may not have needed to frequently exercise its right to direct and control the worker; however, the facts evidence the payer retained the right to do so if needed.

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 payer 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 payer 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. In this case, the worker did not invest capital or assume business risks. 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. Based on the hourly rate of pay arrangement the worker could not realize a profit or incur a loss.

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