

SS-8 Determination—Determination for Public Inspection

Occupation

02OFF Office Worker

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 corporation providing real estate marketing services to the agents and mortgage lenders. The firm engaged the worker as a success director. The worker was required to fill out an application for the position. There was a written agreement between the two parties.

The worker had a supervisor that trained and monitored the worker's services. The worker received her assignments from the firm and the firm determined how those assignments should be performed. The worker relied upon the firm to resolve her problems and complaints. The worker was required to submit time sheets and reports on services performed. The firm stated the worker set her own schedule but the worker stated she was required to perform her services according to the firm's normal business hours. The worker performed her services from her home. The worker was required to attend meetings via the Internet. The worker was required to perform her services personally.

The worker was provided with a phone and Internet services to the firm's service/program. The worker did not lease any space to perform her services. The worker was paid on an hourly basis according to the amount of time she documented on her time sheets. The worker stated business related expenses of travel, hotels and meals were expenses that were reimbursed to her. The customers paid the firm directly. The worker stated the membership costs were set by the firm. The firm stated the level of payment for the services provided were negotiated.

The firm stated the worker received bonuses. Either party could terminate the relationship without incurring a liability. The worker stated she did not perform similar services for others. The worker performed services under the firm's business name. The worker terminated the relationship.

The agreement between the two parties outlined the worker's duties, her requirements for record keeping of her time and the amount the worker would be paid. The agreement also included a non-compete clause.

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.

The statement that the worker was an independent contractor pursuant to an 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.

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. This control factor is present if the person or persons for whom the services are performed have the right to require compliance with instructions. Some employees may work without receiving instructions because they are highly proficient and conscientious workers or because the duties are so simple or familiar to them. Furthermore, the instructions, that show how to reach the desired results, may have been oral and given only once at the beginning of the relationship. In the instant case, the worker was instructed how to perform her services and then the firm monitored the services the worker performed as an employer.

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 did perform her services 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. The worker was required to perform her services personally which demonstrated the firm was interested in the methods used as an employer.

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. The worker was required to submit time sheets as well as reports on the services she performed which demonstrated control over the worker as an employee.

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 firm did reimburse the worker work related travel expenses.

An independent contractor is supposed to work for other entities, usually at the same time as he/she is working for the employer. The independent contractor may work for the employer's competitors because he/she specializes in a particular field and, guess what, the employer's competitors in that field need the independent contractor's specific expertise, too. You may, like any other company, be concerned that the independent contractor will obtain your proprietary information and run off to start a competing business or take it to a current competitor. If that is a real risk, then maybe the task that this person is performing for your company is simply not meant to be an independent contractor task. Anyone who is doing something for you that allows them to have that much access to such a critical and confidential part of your business is doing something that is too integral to your operations to be considered an independent contractor assignment.

The worker was an employee according to common law. The information provided by both parties showed the firm retained control over the worker when the firm trained the worker and monitored and tracked the services the worker performed. The worker relied upon the firm as an employer to resolve her problems and complaints. Control was also shown since the firm required the worker to attend specific meetings. The fact the firm required the worker to perform her services personally demonstrated the firm was interested in the methods used as well as the end result. The firm had the financial investment as the firm set the price to charge the customers, provided the worker with a voice desk phone, access to their internet program and incurred all work related travel expenses. The worker performed her services under the firm's business name which demonstrated the worker's services were integrated into the firm's daily operations.

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