

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 operated a home health agency. The firm engaged the worker as an office assistant. The worker performed clerical duties i.e. copying, filing, sorting, and general administrative tasks. The worker filled out an application for the position. There was no written agreement between the two parties involved.

The worker stated she was trained by the firm. The firm stated they agreed upon the scope of the work. The worker received her assignments from the firm. The worker ultimately relied upon the firm to resolve her problems and complaints. The worker was required to submit time sheets. The worker performed her services at the firm's location.

The firm provided the location, office equipment and supplies for the worker to perform her services. The worker was paid on an hourly basis. The worker could not suffer a significant loss in the performance of her duties.

Either party could terminate the relationship without incurring a liability. The worker stated she did not perform similar services at the same time she performed services for the firm. The firm terminated the worker's services.

The worker provided a copy of the Offer Letter to her from the firm dated August 23, 2017. The letter stated the firm was pleased to extend an offer of employment as an Office Assistant. The letter consisted of the hourly rated of pay of \$11/hr. The letter also included the worker's schedule. There were no minimum hours guaranteed during any week of employment. As a new employee, the worker would not be eligible to participate in the firm's benefit plans and not eligible for holiday pay or paid time off. There was a probationary period of 90 days. The worker was to ensure her W-4 was on file with them. The worker's start date was 8-23-17.

The worker also provided a copy of a letter dated November 20, 2017 terminating the worker's services as the firm had decided on a different operational need for their company.

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 performed services as an office assistant. Her services were integrated into the firm's daily operations as an employee.

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. In the instant case, the worker was required to submit time sheets which showed control over the worker. The establishment of set hours of work by the person or persons for whom the services are performed is a factor indicating control. This was further demonstrated by the Offer Letter that included the worker's days and times she would perform her services.

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, the worker was paid by the hour for the services she performed.

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 her own business.

The worker was an employee according to common law. The information provided by both parties showed control by the firm when the worker was trained on how to perform her services. Control was also shown since the firm required the worker to fill out timesheets and set the worker's weekly schedule. The firm had the financial investment since the firm provided the office, office supplies and equipment for the worker to perform her services. Financial control was also demonstrated by the firm setting the worker's hourly rate of pay in the Offer Letter. The worker performed services as an office assistant at the firm's office which demonstrated the worker's services were integrated into the firm's daily operations. The fact the firm terminated the worker's services without incurring a liability showed control over the worker through the threat of dismissal.

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