

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 provides cleaning services to their customers. The firm engaged the worker as an administrative assistant. The firm bought the company in the beginning of September and kept the worker on as the administrative assistant for a few weeks. The worker was paid as an employee by the previous owner but when the firm bought the company the firm then changed the worker to an independent contractor.

The worker received no instructions from the firm. The worker received her assignments from the firm. The assignments were determined by the previous owner. The worker was required to submit spreadsheets, copies of documents, etc. The worker had a set schedule that consisted of 13hrs/week. The worker performed her services at the firm's location. The worker was required to perform her services personally.

The worker was provided with office supplies, equipment and materials 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. The firm established the level of payment for the services provided.

The worker received no benefits from the firm. Either party could terminate the relationship without incurring a liability. The worker did not perform similar services for others at the same time she performed services for the firm. The firm terminated her services.

The worker provided the following copies:

A copy of the Acknowledgement and Authorization Regarding Background Investigation

Form I-9

Copy of her passport

Employment Agreement which outlined the firm's requirements as an employee.

Copy of her W-4 Form

Employee Information and checklist for Payroll Setup

Date of Hire: 9/1/17 & Rate of Pay \$14.75

Copy of a Form for Direct Deposit to her Checking Account with a copy of a voided check

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 a verbal 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.

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 administrative services for the firm which were integrated into the firm's daily operations and made a smooth transition in the acquisition of the previous firm.

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 worker was required to perform her services personally which demonstrated the firm was interested in the methods used as well as the end result. Control was further demonstrated by the firm when they required specific reports from the worker.

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's hourly rate was set by the firm as shown in the Employee Information and checklist for Payroll Setup.

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. There was no evidence showing the worker was providing this type of services to any other parties as operating her own business.

The worker was an employee according to common law. The information provided by both parties showed the worker received her assignments from the firm which demonstrated control. Control was also shown by the firm setting the worker's weekly schedule. The fact the worker was required to perform her services personally showed the firm was interested in the methods used as well as the end result. The worker could not suffer a significant loss as operating her own business and there is no evidence showing the worker was in business for herself. The firm set the hourly rate of pay which demonstrated financial control. The fact the worker performed services as an administrative assistant for the firm's company this demonstrated the worker's services were integrated into the firm's daily operations. The firm retained the right to discharge the worker without incurring a liability which showed control 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