

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 in the business of providing mobile veterinary services. The worker was engaged to perform data entry, answer phone calls and emails from her home, prepare county reports and file client forms. The worker received a 2017 Form 1099-MISC for her services and continued to provide her services into 2018 as well. There was no written agreement.

Both the firm and the worker agreed that the firm did not provide specific training or instructions. The firm gave the worker a list of tasks with a specific order in which to be performed. Each party indicated that the other determined the methods by which the assignments were performed. Both agreed that the firm would be contacted if any issues or problems arose. The worker submitted her weekly timesheet; the firm indicated that there were monthly county tag set reports. The worker performed data entry, filed client forms for recordkeeping, replied to emails and phone calls from her house. The worker noted that she worked about two days during specific hours. She worked from her home or the firm's office as well at other locations. There were staff and sales meetings. Only the worker noted that she was required to personally provide the services.

The firm provided most supplies and equipment; the firm noted that they provided nothing and that the worker supplied a laptop and cell phone. The worker bought miscellaneous items for which she was not reimbursed. She was paid by the hour and had no other economic risk. The customer paid the firm. The worker did not establish the level of payment for services.

Both the worker and the firm agreed that there were no benefits and that either party could terminate the relationship without incurring a liability. The worker did not perform similar services for others though the firm disagreed. The worker often took data work home and would return it to the firm. The relationship ended has ended.

Analysis

In determining whether an individual is an employee or an independent contractor under the common law, all evidence of both control and lack of control or independence must be considered. The relationship of the worker and the business must be examined. Facts that show a right to direct or control how the worker performs the specific tasks for which he or she is hired, who controls the financial aspects of the worker's activities, and how the parties perceive their relationship should be considered. 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.

Factors that illustrate whether there is a right to control how a worker performs a task include training and instructions. In this case, the firm retained the right to change the worker's methods and to direct the worker to the extent necessary to protect its financial investment. The worker was engaged to provide administrative services for the firm's mobile pet hospital. The firm provided the worker with a list of her duties and tasks as well as the sequence of performance. She worked set scheduled hours as directed by the firm. 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. The worker worked part-time and did take some work home. If the nature of the occupation makes fixed hours impractical, a requirement that workers be on the job at certain times is an element of control. Also, work done off the premises of the person or persons receiving the services, such as at the office of the worker, indicates some freedom from control. However, this fact by itself does not mean that the worker is not an employee. In addition, the worker provided her services on a continuous basis throughout the time period involved, even though the relationship was brief. 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.

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 fact that the worker provided some services from her home would not indicate a significant investment on her part. It was the firm that had the investment in any facility or equipment. The worker simply received an hourly rate of pay and had no other economic risk. 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.

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. There were no benefits and there was no written agreement. The worker was engaged as to provide specific services for the firm's mobile operation. When doing so, the worker was not engaged in an separate business enterprise. Her services instead were essential to and part of the firm's continuing operations. 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.

The firm indicated that both parties agreed to the independent contractor relationship. However, in *Bartels v. Birmingham*, 332 U.S. 126, 1947-2 C. B. 174, the Supreme Court stated that whether there is an employment relationship is a question of fact and not subject to negotiation between the parties. The firm also pointed out that she worked for others as an independent contractor. However, it is possible for a person to work for a number of people or firms concurrently and be an employee of one or all of them.

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 see Publication 4341 for guidance and instructions for firm compliance.