

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 firm is a limited liability company that files as a partnership. The firm operates a martial arts gym. The firm engaged the worker as a marketing agent who also was engaged to assist at their front desk to check-in clients and assist with sales to the gym.

The firm stated the worker manages their social media sites. The worker states she was instructed on how to perform sign-ups for the firm, check-ins of clients and clock in other staff. The worker receives her assignments from the firm. The owners determine how the assignments should be performed. The worker relies upon the firm to resolve her problems and complaints. The worker states she has a set schedule from 2 p.m. to 8 p.m. The worker states she performed her services at the firm's location and the firm states she also performed some services at home. The worker is required to attend staff meetings. The worker is required to perform her services personally.

The firm provides the worker with a location, computer and a tablet to perform her services. The worker did not lease any space. The worker is paid on an hourly basis. The customers pay the firm directly for the services they receive. The firm set the hourly rate of pay to the worker.

The worker receives no benefits. Either party can terminate the work 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 worker states she is represented as an employee. It appears the work relationship is still on going.

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 mans the firm's front desk, check-in clients and staff, and assists with sales for the firm which demonstrates the worker's services are integrated into the firm's daily activity.

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 is required to perform her services personally as an employee. This is further demonstrated since the firm instructs the worker what services to perform and how to perform those services as an employee.

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 is paid at an hourly rate. The fact the firm is responsible to collect the amount charged to their clients shows the firm has the potential to suffer a significant loss in operating their own business.

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 can not suffer a significant loss as operating their own business.

The worker is an employee according to common law. The information provided by both parties shows the worker receives her assignments from the firm and the firm determines how those services should be performed as an employer. The fact the worker relies upon the firm to resolve her problems and complaints demonstrates the worker has a dependency upon the firm as an employer. The fact the firm requires the worker to perform her services personally shows the firm is interested in the methods used as well as the end result as an employer. The fact the worker does not have a significant investment in the performance of duties and the firm provides the worker with the materials she needs to perform her services demonstrates the worker is not operating her own business. The worker operates the firm's websites, checks-in clients to the gym and assists with sales for the firm's gym business which demonstrates the worker's services are 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