

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

Information provided indicated the firm is a high-tech sales and strategy company. The worker had been retained by the firm as an inside technical account manager in tax year 2017. The firm reported the income on Form 1099-MISC. The firm indicated he was never added as an employee, as he only worked for one summer. The firm indicated one week of technical training had been provided. The firm owner gave all work assignments and determined how they were to be performed. The firm indicated all work was performed at the firm's office from nine to five, with one hour for lunch. The firm indicated they provided all equipment and supplies. The firm stated the worker had been paid by the hour. The customer paid the firm. the firm did carry workmen's compensation insurance. No additional benefits had been indicated. Either party could have terminated the work relationship without incurring a penalty or liability.

The worker provided a copy of the 'Offer of temporary employment as an inside technical account manager.' The position was to start June 2017. Started salary was twelve-fifty an hour with a guaranteed thirty-two hour work week (1099 status). His hours would be nine to five, with an hour for lunch (overtime required as needed). He would be reporting to the President/CEO of the firm.

The worker agrees with the information provided by the firm above. He indicated he was also given paid holidays. He indicated the internship concluded and he returned to school.

Analysis

We have applied the above law to the information submitted. 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.

Evidence of control generally falls into three categories: behavioral control, financial control, and relationship of the parties, which are collectively referred to as the categories of evidence. In weighing the evidence, careful consideration has been given to the factors outlined below.

Factors that illustrate whether there is a right to control how a worker performs a task include training and instructions. In this case, you retained the right to change the worker's methods and to direct the worker to the extent necessary to protect your financial investment.

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.

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. In this case, the worker was not engaged in an independent enterprise, but rather the services performed by the worker were a necessary and integral part of your business. Both parties retained the right to terminate the work relationship at any time without incurring a liability.

CONCLUSION

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. The firm offered the worker employment, with a set guaranteed wage to be paid, with a set guaranteed number of hours per week, (plus overtime if needed). All work was performed on the firm premises, utilizing the firm's equipment and supplies. All work was directed by the firm. Internships are paid positions for services rendered. The fact the work was only for a temporary period, does not indicate an independent work relationship. The wages paid for those services are subject to all applicable employment taxes and should be reported on Form W-2.