

SS-8 Determination—Determination for Public Inspection

Occupation 02OFF Office Worker	Determination: <input checked="" type="checkbox"/> Employee <input type="checkbox"/> Contractor
UILC	Third Party Communication: <input checked="" type="checkbox"/> None <input type="checkbox"/> 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 does estate sales. The firm indicated the worker did research and pricing on a part time basis for the firm in 2017. They reported the income paid on Form 1099-MISC. The firm indicated the worker was given an explanation of company goals and procedures. She was instructed where the estate sale would take place. The firm indicated the worker determined the routine and work scheduled hours. Services were performed at the firm's customer home. The worker was required to perform services personally. The firm hired and paid all workers. The firm provided the pricing supplies, the worker provided her own phone. The firm indicated the worker was paid by the hour, no additional benefits were given. The customer paid the firm. The firm stated the worker was represented as an employee to the customers, work was performed under the firm's business name. The worker became a full time college student.

The worker indicated she performed various duties for the firm, cleaning, organizing, driving, babysitting etc. She agreed she would go to the directed home, and performed services as instructed by the firm. She stated the work schedule varied. The worker agreed she was required to perform services personally. She had no authority to hire. The worker agreed the firm provided all supplies and materials. She was paid by the hour and agreed the customer paid the firm. Either party could terminate the work relationship without incurring a penalty or liability. She agreed she was represented as an employee of the firm.

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 indicated she was an employee of the firm and was represented as such to their customers. The firm indicated "the employee" was an independent contractor because she worked part time and worked independently. Although the worker had the autonomy to perform the services at her discretion, all work was performed under the firm's business name, for the firm's customer. The worker did not own or operate her own business. The worker was paid by the hour, and utilized the materials provided by the firm.