

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 worker initiated the request for a determination of her work status as a clerk in tax years 2016 and 2017, for which she received Form 1099-MISC. In this position she sorted and distributed in-coming mail, ran a cash register, provided fax and copy services, notary services, outgoing mail, answer phones, restock inventory, and data entry. The firm's business is described as retail, postal services, printing, copy and fax, computer rental, notary, [REDACTED], [REDACTED] and [REDACTED] drop off and pick-up.

The firm's response was signed by the owner. The firm's business is mailbox service/shipping services. The worker provided services as a mail sorter. In a cover letter, and then in a telephone conversation, the firm provided the following information: the worker was referred by a friend; worker was initially hired and trained as an employee and started her job without disclosing a medical condition; and, her responsibilities were to sort and deliver mail to post boxes. The firm advised the worker that she could come into work whenever she felt fit to work and for this reason the worker was not provided a formal schedule. Due to her irregular schedule, the firm decided not to put her on payroll as a W-2 employee; she was treated as a contracted employee and issued Form 1099-MISC.

The firm and worker concur that the worker was given specific training and instructions on all tasks and services of sorting mail, working the machines and register, and customer lists. The job assignments to sort and deliver mail to the mailboxes came from the owners. The firm and worker did not agree as to which party to the relationship determined the methods by which the worker's services were performed. The worker stated that any problems or complaints she encountered were directed to the firm for resolution; the firm did not respond to the question. The firm and worker acknowledged the worker's services were rendered on a part-time basis at the firm's business location. The worker was required to perform the services personally.

The firm provided the mail, all supplies, equipment, materials, and property; the worker furnished nothing. The worker did not lease equipment, space, or a facility. The worker was paid an hourly wage; the customers paid the firm. The worker was not covered under the firm's workers' compensation insurance policy. The worker's risk for a financial loss in this work relationship was considered 'not applicable'. The firm indicated the worker established the level of payment for services provided or products sold; the worker disagreed.

Both parties responded that there were no benefits extended to the worker and that either party could terminate the work relationship without incurring a liability or penalty. The worker was not performing same or similar services for others during the same time frame.

Analysis

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. Some employees may work without receiving instructions because they are highly proficient and conscientious workers or because the duties are so simple or familiar to them. Furthermore, the instructions, that show how to reach the desired results, may have been oral and given only once at the beginning of the relationship.

Training a worker by requiring an experienced employee to work with the worker, by corresponding with the worker, by requiring the worker to attend meetings, or by using other methods, indicates that the person or persons for whom the services are performed want the services performed in a particular method or manner. This is true even if the training was only given once at the beginning of the work relationship.

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.

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. Also, workers are assumed to be employees if they are guaranteed a minimum salary or are given a drawing account of a specified amount that need not be repaid when it exceeds earnings.

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. Also, if the firm has the right to control the equipment, it is unlikely the worker had an investment in facilities.

A person who can realize a profit or suffer a loss as a result of his or her services is generally an independent contractor, while the person who cannot is an employee. "Profit or loss" implies the use of capital by a person in an independent business of his or her own. The risk that a worker will not receive payment for his or her services, however, is common to both independent contractors and employees and, thus, does not constitute a sufficient economic risk to support treatment as an independent contractor. If a worker loses payment from the firm's customer for poor work, the firm shares the risk of such loss. Control of the firm over the worker would be necessary in order to reduce the risk of financial loss to the firm. The opportunity for higher earnings or of gain or loss from a commission arrangement is not considered profit or loss.

We have considered the information provided by both parties to this work relationship. 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 and business reputation and to ensure its customers' satisfaction and that its contractual obligations were met. The worker was not operating a separate and distinct business; 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. 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 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 the firm's business.

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. For federal income tax withholding and social security, Medicare, and federal unemployment (FUTA) tax purposes, there are no differences among full-time employees, part-time employees, and employees hired for short periods. It does not matter whether the worker has another job or has the maximum amount of social security tax withheld by another employer.