

SS-8 Determination—Determination for Public Inspection

Occupation

Business, Office, & Sales Services

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 installing satellite TV and internet. The worker was engaged to fill-in as temporary office help. She received a Form 1099-MISC for her services in 2016 and 2017. There was no written agreement. The worker had been an employee and was issued Form W2s for substantially the same services; however, that relationship ended in 2014.

The firm provided no training. The worker would be contacted when the firm's office required coverage. The firm determined the methods by which the assignments were performed and would be contacted if any issues arose. There were no required reports. The worker's routine included answering phones, discussing options with customers regarding installations and leaving notes for the firm's owner. Both parties agreed that she worked at the firm's premises, that there were no meetings and that the worker was required to provide the services personally.

Both the firm and the worker agreed that the firm provided all equipment, materials, the workplace, and office supplies that the worker needed when providing her temporary services. The worker was paid an hourly rate and had no other economic risk though the firm indicated that it did not know how the worker was paid. The customer paid the firm. The worker did not establish the level of payment for services.

Both the firm and the worker agreed that there were no benefits for the time period in question. Either party could terminate the relationship without incurring a liability. The relationship ended when another worker was hired to provide office help when necessary.

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. 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 provided temporary office help for the firm when requested. The worker had previous work experience with the firm, and therefore did not require extensive instructions. She worked set scheduled hours and days to fill-in for an absentee worker when needed. 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. The worker's services for the firm were all performed at the firm's location, also a factor that suggests the firm's ability to retain control over the worker. While it is acknowledged that the firm might have been unaware of all the circumstances surrounding the work situation, the firm ultimately paid the worker for her services and presumably was aware when she was working for the firm, even though on a temporary basis. While the worker's services were for a limited number of hours, those services were continuous. 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. It was the firm that had the investment in the office, equipment and materials. The worker simply received an hourly rate of pay and had no other economic risk other than the loss of that compensation. 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 during the time period in question and there was no written agreement. When working for the firm as temporary, fill-in office help, the worker was not engaged in a separate business venture. The fact that her services were for a limited number of hours or days did not make her self-employed. Integration of the worker's services into the business operations generally shows that the worker is subject to direction and control, whether it is exercised or not. 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.

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.