

SS-8 Determination—Determination for Public Inspection

Occupation

02OFF Office Worker

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 fitness club. The worker is engaged by the firm as a front desk attendant. The firm reported the worker's remuneration on Forms 1099-MISC for 2015 through 2018.

Information from the parties supports that the firm relies upon the worker's prior training and experience to perform her services. The firm verbally provides the worker with her work assignments as needed. The worker and trainers determine the methods by which the worker performs her services. If problems or complaints occur, the worker contacts the trainers' manager for resolution. The firm stated that the worker decides the dates and hours to work. The worker performs her services on the firm's premises. The worker is required to perform her services personally.

The firm provides the premises, front desk computer, and phone. The worker does not incur expenses in the performance of her services. The firm pays the worker at an hourly rate. It does not cover her under workers' compensation. Customers pay the firm directly at prices established by the firm. Neither party indicated an investment by the worker in the firm or a related business, or the risk of the worker incurring a financial loss beyond the normal loss of compensation.

The firm does not make benefits available to the worker. The worker does not advertise her services or perform similar services for others. The worker verbally agrees to notify the trainers' manager in advance of terminating the work relationship.

Analysis

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 retains the right to change the worker's methods and to direct the worker to the extent necessary to protect its financial investment. The firm relies upon the worker's prior training and experience to perform her services. 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. Although the worker determines her schedule, she performs her services on the firm's premises. The worker is required to perform her services personally, meaning that she cannot engage and pay others to perform services for the firm on her behalf. 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. These facts show that the firm retains behavioral control over the services of the worker.

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, does not have the opportunity to realize a profit or incur a loss as a result of the services she provides. 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 firm pays the worker at an hourly rate. Payment by the hour generally points to an employer-employee relationship. These facts show that the firm retains control over the financial aspects of the worker's services.

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 is not engaged in an independent enterprise, but rather the front desk attendant services the worker performs are a necessary and integral part of the firm's business. 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. These facts show that the firm retains control over the work relationship and services of the worker.

Based on the above analysis, we conclude that the firm has the right to exercise direction and control over the worker to the degree necessary to establish that the worker is a common law employee for all services, and not an independent contractor operating a trade or business.