

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 payer is a private Christian school. The worker was engaged by the school as a secretary. The school reported the worker's remuneration on Form 1099-MISC for 2015. The school and worker agree that the school is currently withholding taxes from the worker's pay. There is no evidence that the worker's services changed when the school reclassified the worker from an independent contractor to employee status.

Information from the parties supports that the school trained the worker. It provides the worker with her work assignments and the methods by which to perform them. If problems or complaints occur, the worker contacts the school for resolution. The worker follows a routine schedule and performs her services on the school's premises. The worker is required to perform her services personally.

The school provides all supplies, equipment, materials, and the property. The worker does not incur expenses in the performance of her services. The school pays the worker at an hourly rate. It does not cover her under workers' compensation. Neither party indicated an investment by the worker in a related business, or the risk of the worker incurring a financial loss beyond the normal loss of compensation.

The school makes paid vacations and holidays available to the worker. Both parties reserve the right to terminate the work relationship without incurring a penalty or liability. The worker does not advertise her services or provide similar services for others during the same time period. The school represents the worker as an employee.

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 school trained the worker. It retains the right to change the worker's methods and to direct the worker to the extent necessary to protect its financial investment. The worker is required to perform her services personally. 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 school 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 provided. "Profit or loss" implies the use of capital by a person in an independent business of his or her own. The school pays the worker at an hourly rate. Payment by the hour generally points to an employer-employee relationship. These facts show that the school 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 services performed by the worker are a necessary and integral part of the function of the school'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 business. These facts show that the school retains control over the work relationship and services of the worker.

Based on the above analysis, we conclude that the school 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 years, and not an independent contractor operating a trade or business.