

SS-8 Determination—Determination for Public Inspection

Occupation

02OFF Office Manager

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 an office manager in tax years 2018 to 2019, for which she received Form 1099-MISC for 2018. In this capacity, her job was to process the support clerical work for the financial services salespersons. The firm's business is described as financial services. The worker stated she had been performing the same job for the prior owner as an employee for 15 years. She was advised by the firm that they had no employees; she signed the agreement in order to remain employed.

The firm's response was signed by a financial advisor of [REDACTED] hereafter referred to as the 'trademark'. The firm's business is financial advice, services, products. The worker provided services as a satellite office manager. In this position she prepared power points before face-to-face client visits and processed the forms after, she scanned, organized, and updated virtual client records, booked and confirmed client visits, logged and responded to correspondence per compliance standards, and cleaned the office when necessary. The nature of the work was limited to task completion with no set schedule/hours. The worker's performance was measured by task completion.

The worker responded that she was required to take the mandatory trainings through the trademark website. Her job assignments consisted of a list of tasks as outlined in the offer letter/contract. The firm determined the methods by which the worker's services were performed. Any problems with work flow was referred to the trademark and any complaints encountered by the worker were directed to the firm for resolution. The worker was required to provide a written update of the status of all clients every Friday. The worker's services were rendered from 10am to 3pm at the firm's location. The worker stated she was required to perform the services personally; any additional personnel were brought in from another office and were paid by the firm.

According to the firm, upon request from the worker, instruction was given to navigate the software tools, online tutorials were provided but not mandated, and quarterly compliance trainings were mandated by federal regulations. The job assignments were assigned by one of the firm's financial advisors. The firm indicated the worker determined the methods by which she performed her job. Any problems or complaints encountered by the worker were directed to the firm for resolution. The worker was required to provide a weekly report of client correspondence logs. The firm stated the worker's services were rendered on the firm's premises; but, she had no set schedule or hours. The firm responded that the worker was required to perform the services personally; and, any substitutes or helpers additional personnel were hired and paid by the worker although approval was required by the trademark corporate office.

The worker indicated the firm provided a computer, software, the trademark's proprietary software, scanner, printer, and phone. The worker furnished nothing; she did not lease equipment, space, or a facility. She stated the firm required her to pay \$XX/month for the use of the computer and software in order to meet IRS guidelines for Independent Contractor status. She provided a copy of the 'bill' from the firm to the worker for the computer and Microsoft Office. The firm paid the worker a salary; the customers paid the firm. The worker was not covered under the firm's workers' compensation insurance policy. The worker did not establish level of payment for services provided or products sold.

The firm's response indicated the firm provided the worker with access to the firm's office, a choice of desks from which to work from, and access to phone line and internet. The worker furnished a computer and Microsoft software, and any unique office supplies she would need for her tasks. The worker did lease a computer and operating software. The firm acknowledged the worker was paid a salary with bonus structure. The customers paid the firm. The firm acknowledged the worker was not covered under the firm's workers' compensation insurance policy. The worker was not at risk for a financial loss in this work relationship. The firm established the level of payment for services provided and/or products sold.

The benefits available to the worker were bonuses. The firm indicated that either party could terminate the work relationship without incurring a liability or penalty; the worker was not sure, as she was forced to sign a contract through June 2019. Both parties concur the worker was not performing same or similar services for others during the same time frame.

The firm and worker provided a copy of the Formal Offer Letter for the position of office manager with the following duties; prep and follow-up of client visits and focus calls; ongoing organizing, updating, and scanning of the financial advisor's virtual files and calendar visits, and follow-up and confirmation of client visits; ensure each task is completed; handle office correspondence according to mandatory compliance standards; maintain a clean workspace for clients and team members; provide her own computer; and, an annual salary with possible bonus.

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.

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.

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.

A requirement that the worker submit regular or written reports to the person or persons for whom the services are performed indicates a degree of control.

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.

The firm's statement that the worker was an independent contractor pursuant to an agreement is without merit. For federal employment tax purposes, it is the actual working relationship that is controlling and not the terms of the contract (oral or written) between the parties.

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.