

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 receptionist/office clerical support staff in tax year 2018; she answered the phones and set appointments, managed paperwork, and calculated co-payments made in the office. The firm's business is described as a doctor's office.

The firm's response was signed by the firm's president. The firm's business is a medical practice and the worker provided services as a front-desk receptionist covering on an as-needed-basis.

The worker responded that she was given specific training and instructions on what to do and how to do it directly from the firm. The job assignments and the methods by which they were performed were determined by the firm daily and throughout the day. Any problems or complaints encountered by the worker were directed to the firm for resolution. The worker's services were rendered Monday through Friday on the firm's premises. The worker was not required to perform the services personally.

The firm indicated the worker was not given specific training and instructions. The worker was contacted when services might be required; and it was the worker that determined the methods by which she performed her job duties. The worker was required to direct any problems or complaints to the firm for resolution. The worker's services were rendered on the firm's premises during the standard hours of the medical practice. The firm responded that the worker was not required to perform the services personally; and, any additional personnel were hired and paid by the worker.

The firm and worker acknowledged the firm provided all office equipment and supplies; the worker added that uniforms were furnished as well. The worker furnished nothing, did not lease equipment, space, or a facility, and did not incur expenses in the performance of her job duties. The worker was paid an hourly wage/salary. The customers paid the firm. The firm and worker agree the worker was not covered under the firm's workers' compensation insurance policy, was not at risk for a financial loss in this work relationship, and did not establish level of payment for services provided or products sold.

The worker stated the benefits available to her were paid vacations, sick pay, paid holidays, and personal days and that a request form for time off had to be submitted two weeks in advance. The firm stated she was extended paid vacation time. Either party could terminate the work relationship without incurring a liability or penalty. The worker stated she was not performing same or similar services for others during the same time frame. The firm and worker concur she was let go from the job.

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.

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.

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.

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. 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.