

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

It is our usual practice in cases of this type to solicit information from both parties involved. After the worker's initial filing of the Form SS-8, Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding, we requested information from the firm concerning this work relationship. The firm provided information in regard to this work relationship by completing Form SS-8.

From the information provided the firm is a law firm and the worker was engaged to perform miscellaneous tasks such as cleaning, clerical tasks, and bookkeeping services. The firm states the worker performed services on an as needed basis. The firm states they provided training to the worker on how to do payroll. The worker received her assignments from the firm's owner and/or employees as needs arose. The worker determined how she completed her assignments with some guidance from the firm. The worker was required to notify the firm if any problems or complaints arose for their resolution. The firm states the worker was not required to submit reports until she started doing payroll. The firm states the worker had no set schedule and she came into their office when she was needed. The worker performed her services at the firm's premises. The firm states the worker was not required to attend meetings.

The firm provided the office space, office equipment and furniture, office supplies, and a computer to the worker in order to perform her services. The worker incurred expenses for travel and parking and office supplies. Evidence presented in this indicates the firm reimbursed the worker for office supplies. The worker was compensated at an hourly rate which the firm states they established. The firm reported the worker's earnings on Forms 1099-MISC.

The firm states the worker was not eligible for employee benefits. The worker did not perform similar services for others or advertise her services. Either party could terminate the work relationship at any time without incurring a liability. The worker terminated the work relationship.

Analysis

As is the case in almost all worker classification cases, some facts point to an employment relationship while other facts indicate independent contractor status. 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.

Evidence of control generally falls into three categories: behavioral control, financial control, and relationship of the parties, which are collectively referred to as the categories of evidence. In weighing the evidence, careful consideration has been given to the factors outlined below.

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 states they provided no training to the worker in regard to her services until she was training to do payroll. Even if the worker was experienced in this line of work and did not require training or detailed instructions from the payer, the need to direct and control a worker and her services should not be confused with the right to direct and control. The worker provided her services on behalf of the firm rather than an entity of her own. The firm was responsible for the quality of the work performed by the worker and for the satisfaction of their clients. This gave the firm the right to direct and control the worker and her services in order to protect their financial investment, their business reputation, and their relationship with their clients.

Evidence presented in this case indicates the worker performed her services an average of 40 hours per week. Even if the worker had performed services on an as needed basis, it does not dictate the worker's status as an independent contractor since both employees (seasonal) and independent contractors can perform services when the needs of a business warrants. A continuing relationship was established rather than a one-time transaction taking place. A continuing relationship may exist where work is performed in frequently recurring although irregular intervals. The existence of a continuing relationship indicates an employer/employee relationship was established.

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.

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 was not engaged in an independent enterprise. There was no evidence presented or found in this investigation that the worker was in the business of providing similar services to the public. The worker did not have a business license or business registration in the state which she performed services. The worker did not have an investment in a business and therefore, could not incur a loss as a result of her services. Both parties retained the right to terminate the work relationship at any time without incurring a liability.

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.