

SS-8 Determination—Determination for Public Inspection

Occupation

02OFF Front Desk Team 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**

CASE FACTS: The firm engaged the worker as a Front Desk team Member from 11/2017 to 11/2018. The firm operates as a fitness studio. The firm claimed that it hires all staff was hired as independent contractors except for a few employees.

The firm stated that all staff was trained by the manager with any additional training as needed. The worker contends that he was trained by the office manager. However the firm alleges that this worker did not attend any training, the parties disagree. The worker and the firm both agree that there were written instructions regarding the services to be performed. The manager determined the methods by which those services were performed. He worked 5 days a week, from 4:30 am to 8 am. The firm was responsible for problem resolution. The worker was not required to submit reports. He performed the services at the firm's premises. The worker was required to attend bi-weekly meetings. The firm stated that the worker did not attend all required meetings. The relationship between the parties was continuous, as opposed to a one-time transaction. The nature of this relationship contemplated that the worker would perform the services personally. The worker worked exclusively and on a continuing basis for the firm. His services were an integral and necessary part of the services the firm provided to its customers. The firm would hire and pay any substitutes or helpers.

The worker stated that the firm provided the facility, computer and office supplies at no expense to him. The worker did not lease equipment. The firm determined the rates charged to the customers and the customers paid the firm's business directly for the services provided by the worker. The worker was not allowed a drawing account against future earnings. The worker was provided remuneration in the form of an hourly wage and it was the firm who determined the worker's method of payment. The worker was paid as an individual and not to a business account. The firm did not carry worker's compensation on the worker. The worker did not have a substantial investment in equipment or facilities used in the work and did not assume the usual business risks of an independent enterprise.

The worker did not receive sick pay, vacation pay, health insurance, or bonuses. The firm offered the worker free use of fitness equipment and free fitness classes. Either party could terminate the relationship at any time without incurring a penalty or liability. There was not a "non-compete" agreement between the parties. The worker was not a member of a union. According to internal research, the worker did not perform similar services for others. He did not advertise his services to the public, or maintain an office, shop, or other place of business. He was required to perform the services under the name of the firm and for the firm's customers. The firm and worker disagree about how the worker was represented to others. The worker states that he was represented as an employee while the firm contends, he was represented as a contractor. The worker resigned due to more hours that he was able to work. The firm claims that he was let go due to a lack of performance. By definition if an employee displays poor work performance it means that their actions, output and/or behavior don't meet their clearly defined job responsibilities or organization expectations.

Analysis

ANALYSIS/CONCLUSION: 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. The worker performed personal services on a continuous basis. Work was performed on the firm's premises, on a regular schedule set by the firm. The firm provided all significant materials and a workspace to the worker. The worker could not incur a business risk or loss.

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 worker. The worker was paid an hourly wage. The worker did not hold his services out to the public. The above facts do not reflect a business presence for the worker, but rather, strongly reflect the firm's control over the worker's services and the worker's integration into the payer's business. This is a strong indicator that the worker is not an independent contractor.

Based on the common-law principles, the firm had the right to direct and control the worker. The firm's contention that the worker was hired as an independent contractor pursuant to a verbal agreement for him to be treated as such is without merit. It is the firm's responsibility to treat workers according to federal employment tax guidelines and law. Neither the firm nor the worker has the right to decide whether the worker should be treated as either an independent contractor or an employee. Worker status is dictated by the characteristics of the work relationship. If the work relationship meets the federal employment tax criteria for an employer/employee relationship, federal tax law mandates that the worker be treated as an employee. The worker shall be found to be an employee for Federal tax purposes.