
SS-8 Determination—Determination for Public Inspection

Occupation

Business/Computer Services/Office/Sales

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 submitted a Form SS-8 for services performed for the firm as a Waitress/Cashier from January 2024 until April 2025. The worker filed a Form SS-8 because they believe that they erroneously received a 1099-NEC from the firm.

The worker states that they were an employee of the firm because they performed waitress duties, duties were controlled and dictated by the firm, had a schedule, had to clock in and out and had to wear a work shirt with the logo. There were no written agreements between the parties. The oral agreement between the parties was that the worker would fill the position temporarily but then became permanent.

The firm states that they are a Restaurant business. The firm hired the worker as an independent contractor to run the front end of the restaurant. The firm classified the worker as an independent contractor because the position is a contract position. There were no written agreements between the parties. There was an oral agreement between the parties.

The firm states that the worker did not receive any training or instructions. The firm owner gave the worker job assignments in person. The firm owner determined the methods by which job duties were completed. If the worker encountered any problems or complaints while working, the firm owner was to handle it. The firm owner would be responsible for the problem resolution. The firm did not require the worker to complete any reports. The worker completed front end tasks as needed or available 100% at the firm's premises. The firm did not require the worker to attend meetings. The firm did require the worker to provide services personally. The worker could not hire helpers or substitutes.

The worker states that they were trained on the cash register, how to take orders clean certain areas and instructed to wash dishes. The firm owner gave the worker job assignments in person and determined the methods by which job duties were performed. If any problems or complaints arise, the firm owner was to be contacted. The firm owner was responsible for the resolution. There were no reports required of the worker. The worker performed job duties as scheduled 100% of the time at the firm's premises. The worker was not required to attend meetings. The firm required the worker to personally perform services. The worker had no hiring authority.

The firm states that they provided pens and pads while the worker provided uniforms. The worker did not provide or lease any space or equipment. The worker did not incur job-related expenses. The firm paid the worker contract pay based on services. The firm did not give the worker access to advance pay. Customers paid the firm. The firm did not carry worker's compensation insurance on the worker. The worker did not take a financial risk or suffer a financial loss while working for the firm. The firm sets the rate of pay for services performed and products, if sold.

The worker states that the firm provided uniform attire, cleaning supplies and all equipment to perform the job while the worker provided none. The worker did not lease any space or equipment and did not incur any job-related expenses. The firm paid the worker an hourly rate of pay. The worker could not request advance pay. Customers paid the firm. The worker had no exposure to financial risk or loss by performing services.

The firm states that they did not provide benefits to the worker. The firm or worker could end the work relationship without incurring penalty. The worker did not perform similar services for other firms. There were no non-compete agreements in place between the parties. The firm did introduce the worker to its customers as a contractor. Services are performed under the firm's name. The worker no longer works for the firm, contract ended. The worker states that there were no benefits provided to them by the firm. The worker did not advertise their services to the public or assemble products at home. The firm did introduce the worker to its customers as an employee. Services were performed under the firm's name. The worker no longer works for the firm.

Analysis

Generally, the relationship of employer and employee exists when the person for whom the services are performed has the right to control and direct the individual who performs the services, not only as to what is to be done, but also how it is to be done. It is not necessary that the employer actually direct or control the individual, it is sufficient if he or she has the right to do so. Section 31.3121(d)-1(a)(3) of the regulations provides that if the relationship of an employer and employee exists, the designation or description of the parties as anything other than that of employer and employee is immaterial. Thus, if an employer-employee relationship exists, any contractual designation of the employee as a partner, co-adventurer, agent, or independent contractor must be disregarded. Therefore, a statement that a worker is an independent contractor pursuant to a written or verbal 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. Furthermore, whether there is an employment relationship is a question of fact and not subject to negotiation between the parties.

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.

If the work is performed on the premises of the person or persons for whom the services are performed, that factor suggests control over the worker, especially if the work could be done elsewhere. Work done off the premises of the person or persons receiving the services, such as at the office of the worker, indicates some freedom from control. However, this fact by itself does not mean that the worker is not an employee. The importance of this factor depends on the nature of the service involved and the extent to which an employer generally would require that employees perform such services on the employer's premises. Control over the place of work is indicated when the person or persons for whom the services are performed have the right to compel the worker to travel a designated route, to canvass a territory within a certain time, or to work at specific places as required.

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.

The right to discharge a worker is a factor indicating that the worker is an employee and the person possessing the right is an employer. An employer exercises control through the threat of dismissal, which causes the worker to obey the employer's instructions. An independent contractor, on the other hand, cannot be fired so long as the independent contractor produces a result that meets the contract specifications.

Factors that illustrate how the parties perceive their relationship include the intent of the parties as expressed in oral 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, but rather the services performed by the worker were a necessary and integral part of the firm's business. Both parties retained the right to terminate the work relationship at any time without incurring a liability. There is no evidence to suggest the worker performed similar services for others as an independent contractor or advertised business services to the general public during the term of this work relationship. The classification of a worker as an independent contractor should not be based primarily on the fact that a worker's services may be used on a temporary, part-time, or as-needed basis. As noted above, common law factors are considered when examining the worker classification issue. 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. The firm can obtain additional information related to worker classification online at www.irs.gov; Publication 4341.