

SS-8 Determination—Determination for Public Inspection

Occupation

02RET Retail 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 firm is operating a retail women's clothing business. The firm engaged the worker through a referral and verbal agreement to perform services for the firm's business as needed. The worker had experience in the retail sales so no formal training was provided by the firm. The firm and worker determined the business needs and the firm assigned worker work schedules based on business needs. The firm and worker determined the methods used to perform services. The firm required the worker to contact the firm regarding resolutions to problems or complaints. The firm required the worker to provide the firm with time and sales reports. The worker was required to perform the services personally at the firm's place of business. The firm hired and paid substitutes or helpers if needed and approved directly or indirectly through the worker.

The firm provided everything needed by the worker to perform the services. The worker did not lease equipment or space. The worker did not incur any business expenses. The firm paid the worker an hourly wage and commissions on sales. The customers paid the firm directly and indirectly through the worker. The entire amount was turned over to the worker when the worker was paid. The firm determined the level of payment for the products and services. The worker could not suffer any economic loss and had no financial risk.

There were no contracts between the firm and worker. The firm indicated there was a verbal working relationship agreement. The firm indicated the worker possibly performed similar services for others and the worker indicated no similar services were performed for others while performing services for the firm. Per the firm the worker advertised through emails and phone calls to private list of customers and per the worker no advertising was indicated. Both parties retained the right to terminate the working relationship at any time without incurring any liability.

Analysis

When a firm determines or retains the right to determine directly or through designation what, how, when, and where workers perform services an employer/employee relationship exists. For federal employment tax purposes, it is not necessary for firms to exert direct or continuous control nor that services be performed full-time on a fixed scheduled basis, it is sufficient that the firm retains the right to change the workers services, as they deem necessary for business purposes. This control may come from verbal instructions, training, meetings, reporting, as well as supervision. Also, the methods used by workers to perform services are not only controlled through verbal instructions but also by equipment, materials, and supplies provided. In this case, the firm not the worker had control over the methods and means used in the performance of the services. These facts evidence behavioral control by the firm over the services performed by the worker.

When a worker does not have a significant financial investment in a business requiring capital outlays with business risk an employer/employee relationship is evident. In this case, the worker had no financial investment in a business and did not incur any business expenses. The firm had the business investment and control over profit and risk of loss with regard to the services the worker performed for the firm's business. The firm paid the worker an hourly wage and commissions on sales and the customers paid the firm directly and indirectly through the worker. The worker could not suffer any economic loss and had no financial risk with regard to the services performed for the firm's business operation. The opportunity for higher earnings or of gain or loss from a commission arrangement is not considered profit or loss. These facts evidence financial control by the firm over the services performed by the worker.

There were no contracts between the firm and the worker. The firm indicated possibly to the issue of worker performing similar services for others while performing services for the firm. Although this could be an important factor to consider in an independent contractor relationship, this factor alone would not make the worker to be an independent contractor. Many workers have more than one job at a time and may be an employee in one or all working relationships depending on the autonomy of each one. The firm indicated the worker advertised through phone calls and emails to a private list of customers. The worker did not advertise as a business to the public per the worker.

Both the firm and the worker retained the right to terminate the working relationship at any time without incurring any liability. The right to discharge a worker at any time without incurring a liability for termination 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 without a liability so long as the independent contractor produces a result that meets the contract specifications. Likewise, if the worker has the right to end his or her relationship with the person for whom the services are performed at any time he or she wishes without incurring liability, that factor indicates an employer-employee relationship.