

SS-8 Determination—Determination for Public Inspection

Occupation

02RET Retail 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 firm is a thrift store. The worker is engaged by the firm as a cashier. The firm reported the worker's remuneration on Form 1099-MISC for 2017. There is no indication that the firm is withholding taxes from the worker's pay in 2018.

Information from the parties supports that the firm provided the worker with cash register training. The manager provides the worker with her work assignments and the methods by which to perform them. If problems or complaints occur, the worker contacts the manager for resolution. The worker generally works three days per week, and more if needed. She performs her services on the firm's premises. If additional personnel are needed, the firm is responsible for hiring and compensating them.

The firm supplies everything. The worker does not incur expenses in the performance of her services. The firm pays the worker at an hourly rate. It does not cover the worker under workers' compensation. Customers pay the firm directly at prices established by the firm. Neither party indicated the risk of the worker incurring a financial loss beyond the normal loss of compensation.

The firm does not make benefits available to the worker. Both parties reserve the right to terminate the work relationship at any time without incurring a penalty or liability. The worker does not advertise her services or provide similar services for others during the same time period. The firm represents the worker as an employee.

Analysis

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 trained the worker. It is responsible for resolving any problems or complaints that may occur, showing it retains the right to change the worker's methods and to direct the worker to the extent necessary to protect its financial investment. The worker follows the schedule set by the firm. She provides her services on the firm's premises. 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. The worker is required to perform her services personally, meaning that she cannot engage and pay others to perform services for the firm on her behalf. If the services must be rendered personally, presumably the person or persons for whom the services are performed are interested in the methods used to accomplish the work as well as in the results. These facts show that the firm retains behavioral control over the services of the worker.

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, does not have the opportunity to realize a profit or incur a loss as a result of the services provided. The firm pays the worker at an hourly rate. Payment by the hour generally points to an employer-employee relationship. These facts show that the firm retains control over the financial aspects of the worker's services.

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 performs her services on a continuing basis. The worker is not engaged in an independent enterprise, but rather the services performed by the worker as a cashier are a necessary and integral part of the firm's thrift shop business. 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 business. Although the firm does not make benefits available to the worker, both parties reserve the right to terminate the work relationship without incurring liability or penalty, a factor indicating an employer-employee relationship. These facts show that the firm retains control over the work relationship and services of the worker.

Based on the above analysis, we conclude that the firm has the right to exercise direction and control over the worker to the degree necessary to establish that the worker is a common law employee, and not an independent contractor operating a trade or business.