

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 was a corporation that operated a power equipment store. The firm engaged the worker to manage shop inventory, attend the front desk and to maintain their website. There was no written agreement between the two parties. The worker provided us with a copy of the state decision on her work status.

The worker stated she received her instructions and duties from the firm. The worker received her assignments from the firm. The worker stated the firm determined how those assignments should be performed. The worker relied upon the firm to resolve her problems and complaints. The worker was required to perform specific duties during the day. The worker was required to perform her services at the firm's location. The firm stated the worker was required to perform her services personally. The firm hired and paid any additional helpers or substitutes that might be needed.

The firm provided the location and office equipment the worker needed to perform her services. The worker was paid by the hour. The customers paid the firm directly for the services they received. The firm and worker came to a verbal agreement on how much the worker should be paid weekly.

The worker stated she received holiday pay. Either party could terminate the work relationship. The worker did not perform similar services for others. The worker stated she was represented as an employee and the firm stated they represented the worker as a contractor. The worker was terminated from her services.

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.

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. In the instant case, the worker managed the firm's inventory, maintained their front desk and maintained their website. This demonstrated the worker's services were integrated into the firm's daily operations.

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. In the instant case, the firm stated the worker was required to perform her services personally which demonstrated the firm was interested in the methods used as well as the end result as an employer. This was further demonstrated by the fact the firm instructed the worker how to perform her services and gave the worker her daily duties.

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. In the instant case, the firm did control how and when they paid the worker for her services which showed financial control over the worker. This was further indicated by the fact the firm had the financial investment as the firm provided the worker with a location and provided everything necessary for the worker to perform her services.

Lack of significant investment by a person in facilities or equipment used in performing services for another indicates dependence on the employer and, accordingly, the existence of an employer-employee relationship. The term "significant investment" does not include tools, instruments, and clothing commonly provided by employees in their trade; nor does it include education, experience, or training. In the instant case, the worker could not suffer a significant loss as operating their own business.

The worker was an employee according to common law. The information provided by both parties showed the worker was directed and controlled by the firm. The firm instructed the worker on the services and duties she was required to perform which showed control. The fact the firm required the worker to perform her services personally demonstrated the firm was interested in the methods used as well as the end result as an employer. The firm provided the worker with the location and everything she needed to perform her services. The fact the worker ran the firm's front desk and assisted on the firm's website demonstrated the worker's services were integrated into the firm's daily operations. The firm retained the right to discharge the worker without incurring a liability which showed control over the worker through the threat of dismissal.

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.

Please go to www.irs.gov for further information.

Firm: Publication 4341

Worker: Notice 989