

SS-8 Determination—Determination for Public Inspection

Occupation

02RET Customer Service

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**

Information provided indicated the firm is a local and national sales and service of consumer goods (fabric, thread, sewing machines and related notions and accessories). The worker performed services in 2016 and 2017 as a store clerk/customer service person. The firm reported the income on Form 1099-MISC, stating the worker signed an Independent "Employment" Contract Agreement. That contract was renewable yearly. Both parties provided a copy of said agreement. The worker also provided a copy of the list of additional staff responsibilities.

The firm indicated no formal training was provided, they were provided work guidelines, but were allowed to utilize their own work flow. The firm indicated the worker reported to a work location as needed, depending on the day and location, some preparation may be needed. Data entry work reports were provided to the worker identifying products that needed data. The worker utilized the firm's equipment to perform his services. This worker performed services at the firm's location and/or the customer location. He was not allowed to work from home. The worker was not required to work more than the hours in his contract, additional hours were made available as needed by the firm. The firm hired and paid all workers. The worker was paid by the hour, and given commissions and bonuses. The customer paid the firm. The firm indicated it provided all equipment, materials and inventory, and company work shirts. Some travel may be required in the job, the firm provided the transportation, food and lodging for overnight or multi-day events not within a reasonable driving distance. The firm indicated they were represented as their staff.

The worker indicated he performed services approximately thirty-five hours per week. He indicated he was required to clock in and out and required to be at work fifteen minutes prior to the start of his shift. He indicated he performed services as a retail store clerk, waiting on the store customers as they entered, or called. He indicated training was provided when he was first hired. He agreed he was paid by the hour and the customer paid the firm. The worker agreed he was represented as an employee of the firm.

In addition to the Independent Employment contract Agreement the worker provided a copy of the additional staff responsibilities. It covers:

- rules on cell phone usages (no longer allow on the sale's floor and turned off while working.)
- Guidance on the requirements of working at the cutting table (all work performed under their staff ID).
- Guidance and procedures on performing machine sales
- Guidance and procedures on greeting customers- customers in the store take precedence over those on the phone..call them back.
- rules on staff hours 9:45 - 4:45 (or until the last customer leaves. Perform daily cleaning procedures at the end of the shift.
- Lunch times are listed, you must now clock out for lunch. You may clock back in early. NEVER tell a customer you have to leave for lunch, get someone else to assist them and then politely excuse yourself.
- return all calls to management promptly.

Analysis

We have applied the above law to the information submitted. 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.

Evidence of control generally falls into three categories: behavioral control, financial control, and relationship of the parties, which are collectively referred to as the categories of evidence. In weighing the evidence, careful consideration has been given to the factors outlined below.

Factors that illustrate whether there is a right to control how a worker performs a task include training and instructions. In this case, you retained the right to change the worker's methods and to direct the worker to the extent necessary to protect your financial investment. The establishment of set hours of work by the person or persons for whom the services are performed is a factor indicating control. 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.

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, did not have the opportunity to realize a profit or incur a loss as a result of the services provided. The fact that the person or persons for whom the services are performed furnish significant tools, materials, and other equipment tends to show the existence of an employer-employee relationship. If the firm has the right to control the equipment, it is unlikely the worker had an investment in facilities.

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 was not engaged in an independent enterprise, but rather the services performed by the worker were a necessary and integral part of your business. Both parties retained the right to terminate the work relationship at any time without incurring a liability.

CONCLUSION

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 is a retail business, the worker performed service as a cashier/clerk for the store. All work was performed on the firm premises, as directed by the firm. Store uniform shirts were provided. The firm stated they were represented as their staff members. The worker was paid by the hour, plus commissions, bonuses and travel expenses. The worker incurred no business financial expenses in provided those services.