

SS-8 Determination—Determination for Public Inspection

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| Occupation Business/Computer Services/Office/Sales | Determination: <input checked="" type="checkbox"/> Employee <input type="checkbox"/> Contractor |
| UILC | Third Party Communication: <input checked="" type="checkbox"/> None <input type="checkbox"/> 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 convenience store and deli business. The worker performed services for the firm for tax years 2018 and 2019 as a cashier and cook. The firm reported wages earned in 2017 and 2018 on Form 1099-MISC. Their payroll system was not set until 2018, at which time the worker was put on payroll. Therefore the firm also issued Form W-2 in 2018 for the same services. The firm stated she was hired as a full time employee. Verbal work assignments were given on a daily basis. Work hours varied between six, eight and twelve hour shifts. The worker was required to perform services personally. The worker was paid by the hour. The customer paid the firm. Either party could terminate the work relationship without incurring a penalty or liability. The firm indicated the worker wanted to be paid under the table, the firm refused, so the worker quit.

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.

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.

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 This is an erroneous misclassification of employment. The firm stated the worker was hired as a full time employee. The firm did not have their payroll system set up until 2018. At that time firm correctly put the worker on payroll classifying her as an employee. There had been no changes in services provided. The firm maintained control throughout the entire work relationship. Once the payroll system had been set up, the prior income previously reported on Form 1099-MISC, should have been corrected as wages and reported on Form W-2. The worker was an employee throughout the entire work relationship, not just after the payroll system was installed. The payroll system should have been established before the business opened.