

SS-8 Determination—Determination for Public Inspection

Occupation

02SAL Salespersons

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 concession stand at sports events and engaged the worker to perform customer services for the firm's business. The firm notified the worker as jobs were available and allowed the worker to accept or decline jobs. The firm did not provide any training per firm's information and the worker indicated training on the use of firm's equipment and procedures were provided. The firm and worker determined the methods used to perform the services. The worker was required to contact the firm regarding problems or complaints for resolution. The worker's schedules were varied based on the sports events. The worker was required to perform the services personally at the sports complex where the event was held. The firm hired and paid substitutes or helpers if needed.

The firm provided the concession stand and items sold. The worker did not lease anything or incur any business expenses. The firm paid the worker an hourly wage and the customers paid the firm and worker to the products sold. The entire amount was required to be turned over to the firm if the customers paid the worker. The firm did not carry workers' compensation insurance. The worker could not suffer any economic loss and had no financial risk. The firm determined the level of payment for products and services.

There were no contracts between the firm and the worker. The worker did not perform similar services for others or advertise as a business to the public. The worker personally performed services for the firm under the firm's business name on a variable flexible schedule at event locations during a sporting season. 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 risks an employer/employee relationship is evident. In this case, the worker had no financial business investments and no control over profit and loss due to significant business capital outlays being made. 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 the customers paid the firm for products sold. The firm determined the level of payment for the products and services. These facts evidence financial control by the firm over the services performed by the worker.

There were no signed contracts between the firm and the worker. The worker did not perform similar services for others or advertise as a business to the public. The worker personally performed services on a regular and continuous as needed and available basis out of the firm's concession stand at various sports events under the firm's business name.

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.