

SS-8 Determination—Determination for Public Inspection

Occupation

03FMW Warehouse worker

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 in the business of providing warehousing and order fulfillment services. The worker was engaged to perform services in the warehouse, picking the ordered items as well as loading and unloading containers. He received a Form 1099-MISC and a Form W-2 for his services in 2016; he continued to work in 2017 as well. There was no written agreement and the firm agreed that the worker was an employee for the entire time period.

The firm provided training and instructions as well as assigned the worker his tasks. The firm determined the methods by which the assignments were performed and would be contacted if any issues or problems arose. There were no required reports to submit. The worker worked set scheduled hours and days at the firm's locations. There were general meetings to attend. The worker noted that he was required to provide the services personally. Only the firm would hire and pay any substitute workers.

The firm provided the workplace, materials and equipment that the worker needed to provide his services. He was paid an hourly rate and had no other economic risk; the worker was paid every two weeks. The customer paid the firm. The firm carried worker's compensation insurance on the worker. The firm established the level of payment for services.

There were no benefits and either party could terminate the relationship without incurring a liability. The worker did not perform similar services for others. The worker was represented as an employee of the firm. The relationship has ended.

Analysis

In determining whether an individual is an employee or an independent contractor under the common law, all evidence of both control and lack of control or independence must be considered. The relationship of the worker and the business must be examined. Facts that show a right to direct or control how the worker performs the specific tasks for which he or she is hired, who controls the financial aspects of the worker's activities, and how the parties perceive their relationship should be considered. 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.

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 retained the right to change the worker's methods and to direct the worker to the extent necessary to protect its financial investment. This was evidenced by the firm providing training and instructions as well as the worker working set scheduled hours at the firm's location. The worker provided his services on a continuous basis throughout the time period involved. A continuing relationship between the worker and the person or persons for whom the services are performed indicates that an employer-employee relationship exists.

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. It was the firm that had the investment in the facility and the equipment. The worker received an hourly rate of pay and had no other economic risk. 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.

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. There were no benefits and there was no written agreement. The worker was engaged to provide services in the firm's warehouse, picking/fulfilling orders. His services were essential to the firm's continuing operations. 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.

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 for the entire time period and not an independent contractor operating a trade or business.

Please see Publication 4341 for guidance and instructions for firm compliance. This will provide information on the correction of the time period when the worker was issued a Form 1099-MISC.