

Department of the Treasury
Internal Revenue Service

SS-8 Determination—Determination for Public Inspection

Occupation

Business/Computer Services/Office/Sales

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 worker stated they received general surveying instructions. According to the firm the worker received their assignments from the Survey Party Chief at the office location each morning. The Survey Party Chief determined the methods by which the assignments were performed. Any problems or complaints with the services provided by the worker were resolved by the Survey Manager. The worker performed their services personally, as needed at the location specified by the firm.

The firm provided all supplies and equipment as needed for the work to perform their duties, while the worker provided protective wear. The worker stated that they do not lease any equipment, space or facility. The worker did not obtain any expenses. The firm set the rates charged to their customers and they paid the firm. The worker was compensated on an hourly basis.

There was no written contract describing the terms and conditions of the relationship. The worker indicates they did not perform the same or similar services for others. There was no information submitted or discovered indicating the worker provided their services for others. The worker did not advertise, did not maintain a business listing or a business office. The worker performed their services in the firm's name. Either party could terminate the relationship at any time without incurring liability, in fact the relationship has ended as the worker was hired for the summer break.

Analysis

After analysis of the common law factors as they related to this case, we find that the firm exercised sufficient control over the worker to establish the existence of an employer-employee relationship.

The firm maintained the right to direct and control the worker, which is an indication of behavioral 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. Some employees may work without receiving instructions because they are highly proficient and conscientious workers or because the duties are so simple or familiar to them. Furthermore, the instructions that show how to reach the desired results may have been oral and given only once at the beginning of the relationship. 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.

The firm determined the rate charged to the customers, and paid the worker an hourly wage, which is an indication of financial control. 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. The fact that the person or persons for whom the services are performed furnishes significant tools, materials, and other equipment tends to show the existence of an employer-employee relationship.

There was no contract, no business risk for the worker, and either party could terminate the relationship at any time; indicating the relationship of the parties was employer-employee. The firm also stated the worker was hired on a part-time basis. The fact that a worker performed their services on a part-time basis is a neutral fact. A temporary relationship is also a neutral fact. Anyone who performs services for you is your employee if you can control what will be done and how it will be done. This is so even when you give the employee freedom of action. What matters is that you have the right to control the details of how the services are performed.

Accordingly, the worker was an employee of the firm for purposes of Federal employment taxes.