

SS-8 Determination—Determination for Public Inspection

Occupation

03INS Construction/Technical Services/Trades

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 fabricating, assembling, and installing signs. The worker was hired to help assemble signs, assist with installations as well as clean the building. The worker received a 2015 and 2016 Form 1099-MISC for his services. There was no written agreement.

The firm indicated that the worker would be told when he needed to work; the worker noted that he was given instructions per job. Both agreed that the firm gave the worker his work assignments. Each party indicated that the other determined the methods by which the assignments were performed. The firm would be contacted if any issues or problems arose. No written reports were required. The worker's hours varied; the firm noted that he worked when he wanted to. Both parties agreed that he worked 70% of the time at the firm's shop and 30% at customers' locations. There were no meetings. Only the worker indicated that he was required to provide the services personally.

According to the worker, the firm provided all supplies, tools and equipment. The firm stated that they provided cleaning supplies as well as miscellaneous hand tools; the worker also provided some hand tools as well. The worker incurred occasional gas expenses which were reimbursed. Both parties agreed that the worker was paid an hourly rate; the worker noted that he was injured on the job site. The customer paid the firm. Both agreed that the worker did not establish the level of payment for services.

Both the firm and the worker agreed that there were no benefits and that either party could terminate the relationship without incurring a liability. The worker did not perform similar services for others; the firm disagreed. The relationship ended when the worker was injured; the firm noted that he no longer showed up for work.

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. 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.

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. The firm obtained the jobs and engaged the worker to help when needed. As the worker had a variety of tasks, he would need to be told what he needed to do. Although the firm indicated that the worker worked when he wanted to, the firm also stated that the worker was told when he needed to work. 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.

Both parties agreed that the worker worked at the firm's location and at other locations as directed by the firm. If the work is performed on the premises of the person or persons for whom the services are performed, that factor suggests control over the worker, especially if the work could be done elsewhere. Work done off the premises of the person or persons receiving the services, such as at the office of the worker, indicates some freedom from control. Control over the place of work is indicated when the person or persons for whom the services are performed have the right to compel the worker to travel a designated route, to canvass a territory within a certain time, or to work at specific places as required.

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 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. 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.

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 assist the firm when needed. When doing so, the worker was not engaged in an separate business enterprise. His services instead were essential to and part of 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 and not an independent contractor operating a trade or business.

Please see Publication 4341 for guidance and instructions for firm compliance. T