

SS-8 Determination—Determination for Public Inspection

Occupation

03MIS Miscellaneous Laborers

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 home remodeling. As the owner of the firm, you engaged the worker to perform general renovation work. You reported the worker's remuneration on Forms 1099-MISC for 2016 and 2017.

Information from the parties supports that you provided the worker with his work assignments. If problems or complaints occurred, the worker contacted you for resolution. The worker performed his services at your customers' homes. He was required to perform his services personally.

The worker provided his personal tools. You paid the worker at an hourly rate. You did not cover him under workers' compensation. Customers paid your firm directly at prices that you established. Neither party indicated an investment by the worker in your firm or a related business, or the risk of the worker incurring a financial loss beyond the normal loss of compensation.

You did not make benefits available to the worker. There is no evidence presented showing the worker advertised his services or maintained a business listing. Both parties reserved the right to terminate the work relationship at any time without incurring a penalty or liability.

Analysis

Factors that illustrate whether there was a right to control how a worker performed a task include training and instructions. In this case, you were responsible for resolving any problems or complaints that may have occurred, showing you retained the right to change the worker's methods and to direct the worker to the extent necessary to protect your financial investment and ensure your customers' satisfaction with the work. The worker was required to perform his services personally. If the services must be rendered personally, presumably the person or persons for whom the services are performed are interested in the methods used to accomplish the work as well as in the results. These facts show that you retained behavioral control over the services of the worker.

Factors that illustrate whether there was 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. Lack of significant investment by a person in facilities or equipment used in performing services for another indicates dependence on the employer and, accordingly, the existence of an employer-employee relationship. The worker utilized his personal tools. The term "significant investment" does not include tools, instruments, and clothing commonly provided by employees in their trade; nor does it include education, experience, or training. You paid the worker at an hourly rate. Payment by the hour generally points to an employer-employee relationship. These facts show that you retained control over the financial aspects of the worker's services.

Factors that illustrate how the parties perceived 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 were part of the service recipient's regular business activities. In this case, the worker performed his services on a continuing basis. A continuing relationship between the worker and the person or persons for whom the services are performed indicates that an employer-employee relationship exists. The worker was not engaged in an independent enterprise, but rather the general renovation work performed by the worker was a necessary and integral part of your firm's remodeling business. 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. Although you did not make benefits available to the worker, both parties retained the right to terminate the work relationship without incurring liability or penalty, a factor indicating an employer-employee relationship. These facts show that you retained control over the work relationship and services of the worker.

Based on the above analysis, we conclude that you 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.