

SS-8 Determination—Determination for Public Inspection

Occupation

03MIS Warehouse Laborer

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 a warehouse marketing print and promotional materials. The firm engaged the worker through an application process to perform temporary as needed warehouse associate services. The firm or firm designated individuals provided the worker with training and instructions on business practices and procedures. The firm and worker determined the work needed to be performed and methods used to perform the services. The firm required the worker to contact the firm regarding any problems or complaints for resolution. The worker's hours varied based on the firm's business needs. The worker performed the services at the firm's warehouse location. The firm did not require the worker to perform the services personally per the firm and the worker indicated he was required to perform the services personally. The firm hired and paid substitutes or helpers if needed.

The firm provided the warehouse, computer, equipment, and materials needed by the worker to perform services. The worker provided a home computer and received e-mails of jobs available to be performed from the firm. 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. The worker could not suffer any economic loss and had no financial risk. The firm determined the level or payment of the products and services.

There were no contracts between the firm and the worker. The firm did not provide the worker with any benefits. The firm stated the worker did perform similar services for others and was not required to obtain the firm's prior approval to do so. The firm did not know if the worker advertised as a business to the public. The worker stated no similar services were performed for others while performing services for the firm and the worker did no advertising as a business to the public. Both the firm and worker retained the right to terminate the working relationship at any time without incurring any liability.

The firm changed the worker's status to an employee upon the recommendation of the State Department of Labor audit. The services performed remained the same.

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 significant on-going financial business investments and no control over profit and loss due to significant on-going 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. The firm determined the level of payment for products and services. The worker could not suffer any economic loss and had no financial risk with regard to the services performed. These facts evidence financial control by the firm over the services performed by the worker.

There were no contracts between the firm and the worker. The worker did perform similar services for others per the firm and was not required to obtain the firm's prior approval to do so. Although this could be an important factor to consider in an independent contractor relationship, this factor alone would not make the worker to be an independent contractor. Many workers have more than one job at a time and may be an employee in one or all working relationships depending on the autonomy of each one. The worker did no advertising as a business to the public. The worker personally performed services on a temporary as needed basis for the firm's business at the firm's place of business over several months.

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.

Per informations provided it appears that the firm reclassified the worker to an employee for the same services in 2017. We appreciate the firm's compliance with federal employment tax laws. Based on the information provided the worker has been determined to have been an employee for the entire working relationship.