

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**

Information provided indicated the firm is a lawn and landscaping business. the worker performed general laborer services briefly for the firm in tax year 2017. The firm reported the income on Form 1099-MISC. The firm indicated no training or instructions were given. He was given a list of work stat was available for the day. The worker reported to the firm the time it took to complete the jobs given. Services were performed on the firm's clients premises. He was required to perform his services personally. The firm indicated they hired and paid all workers. The firm indicated it provided the truck, mowers and other equipment. the worker was paid by the hour. The customer paid the firm for the services received. Either party could terminate the work relationship without incurring a penalty or liability. The firm stated the worker did perform similar services for others, their permission was required to do so. The worker was represented as a team member of the firm. The worker indicated the job completed and the worker found other work.

The worker indicated he was provided training on the proper use of the firm's equipment. He was required to clock in and out each work day. Work assignments were given from his immediate supervisor. the work day began at seven-thirty and end between five and six. The worker agreed work was performed at the firm's client locations. The worker agreed the firm provided all equipment and supplies, and company work truck. He agreed he was paid by the hour, and the customers paid the firm. He indicated he was represented as an employee of the firm. He indicated he quit.

Analysis

The question of whether an individual is an independent contractor or an employee is one that is determined through consideration of the facts of a particular case along with the application of law and regulations for worker classification issues, known as “common law.” Common law flows chiefly from court decisions and is a major part of the justice system of the United States. Under the common law, the treatment of a worker as an independent contractor or an employee originates from the legal definitions developed in the law and it depends on the payer’s right to direct and control the worker in the performance of his or her duties. Section 3121(d)(2) of the Code provides that the term “employee” means any individual defined as an employee by using the usual common law rules.

Generally, the relationship of employer and employee exists when the person for whom the services are performed has the right to control and direct the individual who performs the services, not only as to what is to be done, but also how it is to be done. It is not necessary that the employer actually direct or control the individual, it is sufficient if he or she has the right to do so.

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. We must examine the relationship of the worker and the business. We consider 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. The degree of importance of each factor varies depending on the occupation and the context in which the services are performed.

Therefore, your statement that the worker was an independent contractor pursuant to an agreement is without merit. For federal employment tax purposes, it is the actual working relationship that is controlling and not the terms of the contract (oral or written) between the parties.

-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.

-If a worker must perform services in the order or sequence set by the person or persons for whom the services are performed, that factor shows that the worker is not free to follow the worker’s own patterns of work. However, if the person or persons retain the right to control the order or sequence of the work, this is sufficient to indicate an employer-employee relationship.

-If the firm has the right to control the equipment, it is unlikely the worker had an investment in facilities. The fact that the person or persons for whom the services are performed furnish significant tools, materials, and other equipment tends to show the existence of an employer-employee relationship.

We have applied the above law to the information submitted. 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.

Evidence of control generally falls into three categories: behavioral control, financial control, and relationship of the parties, which are collectively referred to as the categories of evidence. In weighing the evidence, careful consideration has been given to the factors outlined below.

Factors that illustrate whether there is a right to control how a worker performs a task include training and instructions. In this case, you retained the right to change the worker’s methods and to direct the worker to the extent necessary to protect your financial investment.

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.

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. In this case, the worker was not engaged in an independent enterprise, but rather the services performed by the worker were a necessary and integral part of your business. Both parties retained the right to terminate the work relationship at any time without incurring a liability.

CONCLUSION

Based on the above analysis, we conclude that the firm exercised 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. All work was performed as instructed, in the order as instructed by the worker’s immediate supervisor. Services were performed at the firm’s client locations, utilizing the firm’s work truck, equipment and supplies. The worker was paid by the hour for the work performed. He had no financial investment in the services performed.