

SS-8 Determination—Determination for Public Inspection

Occupation

Construction, Trades & Technical Services

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 produces metal art sculptures and engaged the worker for general labor around the firm's premises and shop. There had been a previous case addressing subsequent years but that case did not include the 2015 year in the determination which found the worker to be an employee. There was no written agreement.

The firm indicated that it hired the worker as a self-employed handyman; however, the worker indicated he was engaged as a laborer. The firm provided all training and instructions. The worker received his work assignments verbally. The firm determined the methods by which the assignments were performed and would be contacted if any issues or problems arose. No required reports. The worker usually worked weekdays with varying hours. All services were performed at the firm's premises. The worker was required to provide the services personally with only the firm hiring and paying any substitutes.

The firm provided the property, equipment, materials, and supplies. The worker was paid an hourly rate and had no other economic risk. There were no benefits. Either party could terminate the relationship without incurring a liability. The worker did not perform similar services for others. He worked under the firm's name. The relationship has ended.

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. 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 engaged the worker to supply labor as needed in and around its shop operations. The worker's services for the firm were all performed at the firm's location, a factor that suggests the firm's ability to retain control over the worker. While the worker's services were for a limited number of hours, those services were continuous. A continuing relationship between the worker and the person or persons for whom the services are performed indicates that an employer-employee relationship exists. A continuing relationship may exist where work is performed in frequently recurring although irregular intervals.

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 had no investment. He simply received an hourly rate of pay and had no other economic risk other than the loss of that compensation. 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 provide labor for a variety of services in and around the firm's operation. When doing so, the worker was not engaged in a separate business venture. In addition, there was no evidence that the worker had a business in which he held himself out to the public to provide similar services. 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 for the entire work relationship 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.