

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 staging company. They furnish homes for sale. The worker performed general labor services, loading and unloading trucks and staging the homes for tax years 2015 through 2018. The firm reported the income on Form 1099-MISC. The firm indicated the workers were changed to employee status in the fall of 2017, per State guidance. The firm indicated the worker was told verbally and was given hands on training, what was to be done. He would arrive at the warehouse at eight a.m., Monday through Friday. He worked until the jobs for the day were completed. Services were performed on firm premises and at customer locations. Staff meetings were required on occasion, there were no penalties for not attending. The firm indicated it provided all vehicle, wrapping supplies etc. The worker was paid by the hour and reimbursed for gas purchases. The customer paid the firm. The firm did carry workmen's compensation insurance. Either party could terminate the work relationship without incurring a penalty or liability. All work was performed under the firm's business name. The firm indicated the worker had been terminated.

The worker agrees with the information provided by the firm.

Analysis

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 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. Services were performed on a full time continuing basis for the firm, under the firm's business name. The worker was instructed on a daily basis as to the jobs to be performed. The firm provided all vehicles, and equipment for the work to be performed. The worker was paid by the hour, indicating no opportunity for profit or loss.