

SS-8 Determination—Determination for Public Inspection

Occupation

03OPE Equipment Operator

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 providing manure composting. The worker was engaged as an equipment operator who provided supervision when needed as well. He received a Form 1099-MISC for his services in 2014, 2015, and 2016. There was a written agreement

Both the firm and the worker agreed that the firm provided no training. The firm informed the worker of his daily work assignment. However, the firm noted that the worker controlled his schedule and work routine as needed to perform the contracted services. Each party indicated that the other determined the methods by which the assignments were performed. The firm noted that the worker was to adhere to the firm's safety rules and regulations as well as all state/local laws. Both parties noted that the firm would be contacted for any issues or problems. The worker submitted a log of the trucks coming in. The worker supervised the yard work, as part of his routine, at the firm's location. The firm added that he set his own schedule and procedures to produce the compost project within the firm's specifications. There were weekly meetings to plan future jobs. Only the worker noted that he was to provide the services personally with the firm hiring any substitutes.

Both the firm and the worker agreed that the firm provided all the heavy equipment. The firm indicated that the worker supplied personal protective equipment and that another party provided the material for composting. The worker was reimbursed for any supplies that he purchased on the firm's behalf. Both agreed that the worker was paid an hourly rate and had no other economic risk though the firm mentioned he would be responsible for damage to tractors or product not correctly processed. Both parties agreed that the customer paid the firm and that the firm established the level of payment for services.

Both the firm and the worker agreed that there were no benefits. Either party could terminate the relationship without incurring a liability; just a thirty-day notice was required according to the firm. The worker did not perform similar services for others; the firm disagreed. 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. 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.

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 had the financial investment in the facility and operation. It engaged the worker to operate its equipment and, at times, to provide oversight of its operation. The worker was to adhere to the firm's rules and regulations, and presumably, was given initial instructions. He was also given considerable latitude regarding his work schedule. However, if the nature of the occupation makes fixed hours impractical, a requirement that workers be on the job at certain times is an element of control. A 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. The worker's services were continuous throughout the years. 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 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. Lack of significant investment by a person in facilities or equipment used in performing services for another indicates dependence on the employer. The worker did provide some personal protective equipment. 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. In addition, 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. While the worker did provide the firm with an invoice, that invoice basically indicated the hours worked for the time period notated.

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 a written agreement. However, the firm's belief 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. The worker was engaged to provide services as an equipment operator for the firm's operation. When doing so, the worker was not engaged in an separate business venture. 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.

It is acknowledged that the worker may have another business. However, it is possible for a person be involved in a business and yet still be an employee when providing services to another based on the actual facts of that work relationship.

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.