

SS-8 Determination—Determination for Public Inspection

Occupation

03PMW Repair/Maintenance Workers

Determination:

☒ Employee☐ Contractor

UILC

Third Party Communication:

☒ None☐ Yes**Facts of Case**

Information provided finds the firm is a distributor of electronic security cameras. The firm indicated the worker performed services for the firm as one of their technical advisors for the firm's products for tax years 2015, 2016 and 2017. The firm reported the income earned on Form 1099-MISC, indicating the worker was an independent contractor, as the work is all performed virtually from home. The worker has requested the work classification determination as she feels she was an employee.

The firm indicated the worker received one day of training at the beginning of the work relationship. After determining their work schedule, they field calls that are routed to them. Technical service is then provided. They would report any issues to the Customer Service manager. The worker reports the hours worked via e-mail. The firm indicated the worker(s) choose when to work, once they have chosen when to work they log in, generally from home and make themselves available to field calls. The firm indicated between calls the worker has no administrative or other obligations. The worker is required to perform the services personally. The firm indicated they provided the phone and two of each of the firm's currently available cameras. The worker provided her own laptop, work space and internet access. The worker is paid by the hour. The client paid the firm. Either party terminate the work relationship without incurring a penalty or liability. The firm stated the worker is represented as a technical support advisor for the firm's products. The firm indicated the worker quit.

the worker stated they had a set schedule that was provided to them each week. If they did not work those hours they could have been terminated. the worker agreed she was provided training from the firm, and provided a copy of the orientation training documents. A copy of the work orders sent via e-mail were also provided. The worker provided a copy of the call logs, hour logs, and work schedules, to include when both the firm and worker asked for extra hours to be performed. The worker indicated the firm provided the phone, she provided her own work space and computer. She agreed she was paid by the hour and the clients paid the firm. Either party could terminate the work relationship without incurring a penalty or liability.

ANALYSIS

Training a worker by requiring an experienced employee to work with the worker, by corresponding with the worker, by requiring the worker to attend meetings, or by using other methods, indicates that the person or persons for whom the services are performed want the services performed in a particular method or manner. This is true even if the training was only given once at the beginning of the work relationship. 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.

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. A requirement that the worker submit regular or written reports to the person or persons for whom the services are performed indicates a degree of control.

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. In today's society many new companies have the capability to provide a work from home environment based business. The firm provided the training to the worker, which indicated they expected the work to be performed a certain way. Whether they continued to direct or control, is irrelevant, they maintained the right to do so. Various reports were expected to record the calls made and services provided. The worker was required to log in and report the hours worked virtually also. The worker was paid by the hour, indicating no opportunity for profit or loss. The client paid the firm, and all work was performed under the firm's business name.