

SS-8 Determination—Determination for Public Inspection

Occupation

03PMW Construction/Technical Services/Trades

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 a handyman business operation and engaged the worker to perform cleaning and maintenance services for firm's customers properties. The firm designated supervisor provided the worker with job assignments and determined the methods used to perform the services. The firm's designated supervisor was required to be contacted regarding resolution to problems or complaints. The firm determined the work schedules and work locations to perform services. The firm required the worker to attend meetings. The firm required the worker to perform the services personally.

The firm provided equipment and worker personal items. The worker did not lease equipment or space. The worker did not incur any significant on-going business expenses. The firm paid the worker an hourly wage and the customers paid the firm. The firm did not carry workers' compensation insurance. The worker could not suffer any economic loss and had no financial risk. The firm determined the level of payment for services.

The worker signed a working relationship agreement indicating the job requirements and worker's status as an independent contractor. The firm did not provide the worker with any benefits. The worker did not perform similar services for others or advertise as a business to the public. The worker performed the services under the firm's business name on a regular continuous as needed basis. The firm and worker retained the right to terminate the working relationship at any time without incurring any liability.

Analysis

When a firm determines or retains the right to determine directly or through designation what, how, when, and where workers perform services an employer/employee relationship exists. For federal employment tax purposes, it is not necessary for firms to exert direct or continuous control nor that services be performed full-time on a fixed scheduled basis, it is sufficient that the firm retains the right to change the workers services, as they deem necessary for business purposes. In this case the firm controlled what, how, when, and where the worker performed the services verbally through a designated supervisor as well as a signed working relationship agreement. Control may come from verbal instructions, training, meetings, reporting, as well as supervision. Also, the methods used by workers to perform services are not only controlled through verbal instructions but also by equipment, materials, and supplies provided. In this case, the firm not the worker had control over the methods and means used in the performance of the services. These facts evidence behavioral control by the firm over the services performed by the worker.

When a worker does not have a significant financial investment in a business requiring on-going business capital outlays with business risk an employer/employee relationship is evident. In this case, the worker had no financial investment in a business and did not incur any significant on-going business expenses. The firm had the business investment and control over profit and risk of loss with regard to the services the worker performed for the firm's business. The firm provided everything needed except personal items. The worker did not lease equipment or space. The firm paid the worker an hourly wage and the customers paid the firm. The firm determined the level of payment for the services. The worker could not suffer any economic loss and had no financial risk with regard to the services performed for the firm's customers. These facts evidence financial control by the firm over the services performed by the worker.

There was a signed working relationship agreement indicating the worker to be an independent contractor with regard to performance of services for the firm's business operation. It is noted that whether there is an employment relationship is a question of fact based on the autonomy of the work relationship and is not subject to negotiation between the parties. The worker personally performed services for the firm's business operation under the firm's business name on a regular and continuous as needed basis over several weeks. The worker did not advertise to the public as being engaged in a business.

Both the firm and the worker retained the right to terminate the working relationship at any time without incurring any liability. The right to discharge a worker at any time without incurring a liability for termination is a factor indicating that the worker is an employee and the person possessing the right is an employer. An employer exercises control through the threat of dismissal, which causes the worker to obey the employer's instructions. An independent contractor, on the other hand, cannot be fired without a liability so long as the independent contractor produces a result that meets the contract specifications. Likewise, if the worker has the right to end his or her relationship with the person for whom the services are performed at any time he or she wishes without incurring liability, that factor indicates an employer-employee relationship.