

SS-8 Determination—Determination for Public Inspection

Occupation

03PMW Maintenance Worker

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 operating a residential home remodeling business. The firm engaged the worker to perform helper services for the firm's business customers based on the worker's skills. The firm assigned the worker locations and jobs to perform via phone or text messages. The firm and worker determined the methods used to perform services through verbal discussions. The firm required the worker to notify the customers to contact the firm regarding problems or complaints for resolution. The worker's hours varied based on jobs being performed and availability. The worker performed the services at the firm's customers job sites. The firm required the worker to perform the services personally. The firm hired and paid substitutes or helpers.

The firm provided the equipment, materials, and supplies and the worker provided nothing. The worker did not lease anything or incur any business expenses. The firm paid the worker an hourly wage and the customers paid the firm. No drawing accounts were allowed. The firm carried workers' compensation insurance. The firm determined the level of payment for the services. The worker could not suffer any economic loss and had no financial risk.

There were no contracts between the firm and worker. The firm provided no benefits. The firm indicated the worker did perform similar services for others and was not required to obtain the firm's prior approval to do so. The worker indicated no similar services were performed for others while performing services for the firm. The worker did no advertising as a business. The firm referred to the worker as the firm's workers to the customers. Both parties retained the right to terminate the working relationship at any time without incurring any liability. The relationship ended when the worker was injured on the job and received workers' compensation benefits.

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. This 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 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 business expenses. The firm paid the worker an hourly wage and the customers paid the firm. The firm controlled the level of payment for the services. 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. These facts evidence financial control by the firm over the services performed by the worker.

There were no contracts between the firm and the worker. There was a verbal working relationship agreement per the firm. 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 did perform similar services for others and was not required to obtain the firm's prior approval per the firm. Although this could be an important factor to consider in an independent contractor relationship, this factor alone would not make the worker to be an independent contractor. Many workers have more than one job at a time and may be an employee in one or all working relationships depending on the autonomy of each one.

Both parties 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.

The relationship ended due to the worker having an on the job accident resulting in workers' compensation claim being paid.