

SS-8 Determination—Determination for Public Inspection

Occupation

03PMW Mechanic

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 operating an automotive repair shop. The worker was an auto repair technician. He received a Form 1099-MISC for services he provided in 2015 through 2017; he had received a 2014 Form W-2 from a related entity. There was no written agreement.

Both the firm and the worker agreed that the firm provided no training. The firm obtained auto repair jobs and assigned them to the worker. Each party indicated that the other determined the methods by which the assignments were performed; but both agreed that the firm would be contacted if any issues or problems arose. There were no reports submitted by the worker. Both parties agreed that the worker worked set scheduled hours during weekdays at the firm's shop. There were no meetings. Both agreed that the worker was required to provide the services personally.

The firm provided the shop, car lift, tire and alignment machines, and stationary equipment. The worker supplied tools and also incurred the expense of any item he damaged. According to the worker, he was paid by the hour. However, the firm noted that the worker was paid a commission but was guaranteed a minimum amount of pay. Both parties agreed that the customer paid the firm and that the firm established the level of payment for services.

The firm noted that there were paid holidays; there were no other benefits. Both agreed that either party could terminate the relationship without incurring a liability. The worker did not perform similar services for others; the firm disagreed. Both agreed that the relationship ended when the worker quit.

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 operated an auto repair shop and obtained the repair jobs. The worker was engaged to provide the repair services needed and did not require training. He worked according to the firm's set scheduled hours and days performing the repair jobs given to him. The establishment of set hours of work by the person or persons for whom the services are performed is a factor indicating control. 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. In addition, he performed his auto repair services at the firm's shop. If the work is performed on the premises of the person or persons for whom the services are performed, that factor suggests control over the worker, especially if the work could be done elsewhere. The worker also provided his services on a continuous basis throughout the time period involved. 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 firm had the investment in the auto repair shop, equipment, and machinery. Lack of significant investment by a person in facilities or equipment used in performing services for another indicates dependence on the employer and, accordingly, the existence of an employer-employee relationship. 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. tools, and supplies. No evidence was provided indicating that the worker was paid a commission. A person who can realize a profit or suffer a loss as a result of his or her services is generally an independent contractor, while the person who cannot is an employee. Profit or loss" implies the use of capital by a person in an independent business of his or her own. The opportunity for higher earnings or of gain or loss from a commission arrangement is not considered profit or loss.

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 paid holidays but there was no written agreement. The worker was a mechanic engaged to provide auto repair services for the firm's auto repair shop. When working for the firm, the worker was not engaged in an separate business venture. If a worker performs more than de minimis services for a multiple of unrelated persons or firms at the same time, that factor generally indicates that the worker is an independent contractor. However, it is possible for a person to work for a number of people or firms concurrently and be an employee of one or all of them. In this case, 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.

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.