

SS-8 Determination—Determination for Public Inspection

Occupation

03PMW Repair/Maintenance Workers

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 residential landscaping. As the owner of the firm, you engage the worker to perform landscaping services. You did not withhold taxes from the worker's remuneration in 2017 and 2018.

Information from the parties supports that you rely upon the worker's prior training and experience to perform his services. You provide the worker with his work assignments. If problems or complaints occur, the worker contacts you; he is responsible for resolving any complaints regarding his own work. You stated that the worker is free to work whatever hours he chooses; thus his routine varies considerably. The worker performs his services on your customers' locations. If additional personnel are needed, you are responsible for hiring and compensating them.

You provide the tools (blower, hedger, clippers, etc.). The worker provides his boots, gloves, clothes, hat, sunglasses, etc. The worker incurs expenses for the replacement of personal apparel, and his personal time and materials to correct any mistakes (if any). The worker can incur expenses for damages to your firm's equipment. You pay the worker at an hourly rate. You do not cover the worker under workers' compensation. Customers pay your firm directly at prices that you establish. Neither party indicated an investment by the worker in your firm or a related business.

You do not make benefits available to the worker. Both parties reserve the right to terminate the work relationship without incurring a penalty or liability. The worker does not advertise his services or provide similar services for others. He performs his services under your firm's name.

Analysis

Factors that illustrate whether there is a right to control how a worker performs a task include training and instructions. In this case, you rely upon the worker's prior training and experience to perform his services. 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. You are ultimately responsible for resolving any problems or complaints that may occur, showing you retain the right to change the worker's methods and to direct the worker to the extent necessary to protect your financial investment and ensure your customers' satisfaction with the work. The worker performs his services on your customers' premises. There is no indication that he can engage and pay others to perform services for the firm on his behalf. If the services must be rendered personally, presumably the person or persons for whom the services are performed are interested in the methods used to accomplish the work as well as in the results. These facts show that you retain behavioral control over the services of the worker.

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, does not have the opportunity to realize a profit or incur a loss as a result of the services he provides. "Profit or loss" implies the use of capital by a person in an independent business of his or her own. The worker provides his own boots, gloves, clothes, hat, sunglasses, etc. 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. You pay the worker at an hourly rate. Payment by the hour generally points to an employer-employee relationship. These facts show that you retain control over the financial aspects of the worker's services.

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 performs his services on a continuing basis. 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. The worker is not engaged in an independent enterprise, but rather the landscaping services the worker performs are a necessary and integral part of the firm's residential landscaping business. 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. Although you do not make benefits available to the worker, both parties retain the right to terminate the work relationship without incurring liability or penalty, a factor indicating an employer-employee relationship. These facts show that you retain control over the work relationship and services of the worker.

Based on the above analysis, we conclude that you have the right to exercise direction and control over the worker to the degree necessary to establish that the worker is a common law employee, and not an independent contractor operating a trade or business.