

SS-8 Determination—Determination for Public Inspection

Occupation 03PMW Weed Control	Determination: <input checked="" type="checkbox"/> Employee <input type="checkbox"/> Contractor
UILC	Third Party Communication: <input checked="" type="checkbox"/> None <input type="checkbox"/> 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

Information provided indicated the firm is a weed control application business. The worker had been retained as a laborer for the firm, to perform those services in tax year 2016. The firm reported the income paid on Form 1099-MISC stating it is industry practice to treat sprayers and pumpers as independent contractors. The firm stated no training was given they were required to already have the skills to do the work. The firm stated when leases are contracted, worker is expected to spray. The work schedule is strictly determined by the weather. Weather permitting he may work eight to ten hours a day, three days a week. All work was performed at the lease sites. He was required to perform services personally. The firm indicated it provided the vehicle and sprayer. The worker was paid by the hour. The customer paid the firm. The firm does carry workmen's compensation insurance. Either party could terminate the work relationship without incurring a penalty or liability. All work was performed under the firm's business name. The firm indicated the worker quit.

The worker indicated he was trained how to mix the chemicals. He would meet at the owner's house and he would take them to the area where they were to work. He indicated he worked twelve to fourteen hours per day. The firm kept track of all equipment, supplies and timesheets. The worker agreed the firm provided all equipment and supplies. He was paid by the hour, the customer paid the firm. He agreed the firm carried workmen's compensation insurance. All work was performed under the firm's business name. The worker stated he quit.

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. All service contracts were obtained by the firm. The firm hired individuals to assist in fulfilling his contracts. The firm provided the vehicle, equipment and materials for those services to be performed. All work was performed under the firm's business name, in the order directed by the firm. The worker was paid by the hour for the work performed, indicating no opportunity for profit or loss. The worker did not own a business, indicating he was not an independent contractor.