

SS-8 Determination—Determination for Public Inspection

Occupation 03PMW Repair/Maintenance Workers	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

The firm is in the business of operating a vineyard. The worker provided cleaning and maintenance of the farm homestead/residence as a cleaning custodian. She received a Form 1099-MISC in 2015, 2016, and 2017; she continued to provide services in 2018 as well. There was no written agreement.

The firm noted that no training or instructions were provided; the worker had prior cleaning experience. The worker spent the time needed based on how dirty the building was. The worker indicated that the firm provided oversight instructions. She received her work assignments in-person and by phone. Each party indicated that the other determined the method by which the assignments were performed; but both agreed that the firm would be contacted if any issues or problems arose. The firm mentioned that there was a verbal monthly report as well as a monthly time sheet. The worker's routine was based on her assigned work at the firm's farmhouse for about twenty-five hours a month. Both parties agreed that there were no meetings and that the worker was to provide the services personally.

The firm provided the required supplies, materials and equipment but noted that the worker also supplied equipment and materials. The firm reimbursed the worker for any essential supplies that she purchased on behalf of the firm. Both parties agreed that the worker was paid an hourly rate, and had no other economic risk. There was a mutual agreement on the established the level of payment for services.

Both the firm and the worker agreed that there were no benefits and that either party could terminate the relationship without incurring a liability. The worker did not perform similar services for others during the same period of time though the firm noted that she was not prohibited from working for others. The relationship has not ended.

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 worker had previous experience in providing cleaning services, therefore, she did not require specific how-to clean instructions. The control factor is present if the person or persons for whom the services are performed have the right to require compliance with instructions. Note that 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. Just because the firm did not exercise its right to direct the worker's activities did not mean that it surrendered that right. The worker reported her monthly cleaning activities to the firm verbally and by submitting a monthly time sheet indicating her hourly work time. The worker was to provide the services personally. 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. While the worker's services were provided part-time and as needed, those services were continuous. 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 worker received an hourly rate of pay and had no other economic risk. Payment by the hour, week, or month generally points to an employer-employee relationship, provided that this method of payment is not just a convenient way of paying a lump sum agreed upon as the cost of a job.

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 no benefits and there was no written agreement. The worker was engaged to clean the firm's farmhouse/residence. When doing so, the worker was not engaged in a separate business venture. The fact that her services were part-time and that she had experience did not establish a business presence for the worker.

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.

Please see Publication 4341 for guidance and instructions for firm compliance.