

SS-8 Determination—Determination for Public Inspection

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| 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 providing cleaning services for new construction. The worker was engaged as a cleaner. She received a 2016 1099-MISC for her services. There was no written agreement.

The worker was told where to go on a daily basis by the firm texting or calling her. The firm determined the methods by which the assignments were performed. Both parties agreed that the firm would be contacted if any issues or problems arose. The worker submitted the sign-in sheet in order to be paid. Her daily routine consisted of working weekdays, for about eight hours a day and sometimes later, or on Saturdays/Sundays, at various locations designated by the firm. The firm noted that the worker's routine consisted of cleaning-up the properties. Both parties agreed that there were no meetings. Each party indicated that the other hired and paid any substitute workers.

Both the firm and the worker agreed that the firm provided all the supplies and materials needed. If the worker made occasional supply purchases, the firm would reimburse her. However, the firm noted that the worker provided her own transportation, work insurance, phone and tools for which she was not reimbursed. She was paid an hourly rate and had no other economic risk though the firm noted that she was paid a lump sum. Both parties agreed that the customer paid the firm with the worker noting that the firm 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; the firm did not know. The firm was responsible for obtaining any new customers. The relationship ended when the worker found a new job though the firm noted that the contract 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. 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 obtained the customers and remained obligated to them to provide the cleaning services. The worker would be told by the firm, via text or phone call, on where and when to go to clean. The worker reported to the job and filled in a sign-in sheet showing days and hours worked, in order to be paid. She submitted copies of these as evidence. 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. The worker did not need any specific, detailed training. However, a control factor is present if the person or persons for whom the services are performed have the right to require compliance with instructions. 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. Also, if a worker must perform services in the order or sequence set by the person or persons for whom the services are performed, that factor shows that the worker is not free to follow the worker's own patterns of work. Often, because of the nature of an occupation, the person or persons for whom the services are performed do not set the order of the services or set the order infrequently. However, if the person or persons retain the right to control the order or sequence of the work, this is sufficient to indicate an employer-employee relationship. In addition, the worker's services were continuous for 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.

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. She received an hourly rate of pay and had no other economic risk other than the loss of that compensation. However, the firm indicated that the worker was paid a lump sum, but that amount likely was still based on an hourly component. 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 provide labor for the firm's cleaning business. When doing so, the worker was not engaged in a separate business venture. 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.