

SS-8 Determination—Determination for Public Inspection

Occupation

03PMW Maintenance

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 providing property preservation and maintenance services. The worker was engaged to provide those handyman-type services. He received a Form 1099-MISC for his services in 2016 and 2017; his services started at the end of 2015. There was no written agreement other than a confidentiality and non-solicitation agreement.

According to the worker, the firm provided training and instructions; however, the firm noted that none were necessary as the worker was skilled. The firm did provide the worker with manuals regarding the work. Both parties agreed that the worker received his work assignments daily via email or text from the firm. 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, even if the worker had to resolve. There were reports of the work done at each location for every work order as well as photos and descriptions of any issues. The worker's routine depended on the jobs for the day. There was no set work schedule; however, the worker needed to complete tasks by due dates. The client work sites varied. There were no meetings. The worker was required to provide the services personally with only the firm hiring and paying any substitutes; the firm disagreed.

Both the firm and the worker agreed that the firm provided all supplies, equipment and materials needed including use of a truck, and lawnmower. The worker supplied a cell phone, drill, hammer and screwdriver. According to the firm, the worker also incurred expenses of oil changes, tire changes, and truck maintenance. The firm did reimburse for gas and tolls as well as pay for workers. Both parties agreed that the worker was paid piecework (per task/job) and by lump sum; he could be charged for incorrect work, usage of firm vehicle, hotels, and any charge-backs. Customers paid the firm. The firm established the level of payment for services. The firm disagreed, however, emails showed that the firm provided the fee schedule and discussed the fee changes per task.

Both the firm and the worker agreed that there were no benefits. The worker noted that either party could terminate the relationship without incurring a liability. However, the firm indicated that there was a verbal contract that could be breached but did not elaborate. The worker did not perform similar services for others; the firm disagreed. The relationship has 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 firm obtained the various jobs and engaged the worker to perform the services that it offered to its clients. The worker may have had some experience but the firm provided him with manuals to ensure that he met the necessary requirements of the tasks that needed to be done. While there was no set work schedule, there were deadlines that the firm, and therefore the worker, was responsible to meet. 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 received the task assignments/work orders from the firm along with the firm's fee schedule for each designated task. The worker reported the completed assignments back to the firm. The firm required that the worker completed a daily task list, a prerequisite for being paid. It provided instructions regarding the implementation of procedures ensuring compliance with the firm's request. If the worker did not know what damages to look for, the firm indicated that it would email training manuals. This illustrated that the firm wanted the services and reporting performed in a specific manner. While the worker was not directly supervised, the firm had the right to redirect the worker's activities, and apparently did so. The worker provided his services to the firm throughout a number of years but continuous 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.

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. In addition, the firm provided all supplies, equipment and materials needed including use of a truck, and lawnmower, as well as reimbursed for gas, tolls, and other workers. The fact that the person or persons for whom the services are performed furnish significant tools, materials, and other equipment tends to show the existence of an employer-employee relationship. 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. Both parties agreed that the worker was paid per task; however, the firm set each task fee as evidenced by emails.

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 was no written agreement showing the intent of the relationship. The worker was engaged by the firm to provide property maintenance for its clients. His handyman-type services were integrated into the firm's business operations and were performed on a continuous basis throughout the years involved. When doing so, the worker was not engaged in a separate business venture. The worker did not hold himself out to the public to provide similar services. The fact that he may have had some experience also did not make him self-employed. 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 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.