

SS-8 Determination—Determination for Public Inspection

Occupation

03PMW Mechanic

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 operating an automobile repair shop. The worker was engaged as an auto mechanic to repair and replace auto parts. He received a Form 480.6B for his services in 2014, 2015 and 2016; and also a Form 480-6A in 2016. There was no written agreement or contract.

According to the worker, he was given instructions on which vehicles to diagnose and repair. He received his tasks daily and as needed (from the firm.) The firm, however, noted that the worker determined what work that he wanted to perform. Each party indicated that the other determined the methods by which the assignments were performed; both agreed that the firm would be contacted if any issues or problems arose. The worker submitted notes describing the damages, solutions and estimates for the repairs. The firm noted that the worker only reported his time on each job. The worker's work routine included performing diagnostics, maintenance, repair along with the estimates. The firm noted that he had no specific hourly schedule; when he came into the shop, he looked for the jobs that he wanted to do. There were no meetings. Both parties agreed that the worker was to provide the services personally with only the firm hiring and paying any helpers.

Both the firm and the worker agreed that the firm provided the workshop; the worker added that the firm provided everything mechanical that was required. However, the firm noted that the worker did. The worker provided and incurred the expense of his tools. Both parties agreed that the worker was paid by the hour and had no other risk other than damage to his tools. The worker did not pay for rental of his workspace. The customer paid the firm. The firm established the level of payment for services.

Both the firm and the worker agreed that there were no benefits. The firm noted that either party could terminate the relationship without incurring a liability; however, the worker noted that there would have to be a reason for termination of services. The worker did not perform similar services for others; the firm disagreed. The relationship ended when the worker's services were terminated; the firm indicated 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. 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 automotive repair jobs and remained responsible to its customers. The worker may have been experienced and did not require much in the way of instructions. He performed diagnostics, maintenance, and repairs on the customers' vehicles provided by the firm. While his hourly schedule may have varied, 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 provided his services at the firm's location which likely had lifts, compressors, and hoists. If the work is performed on the premises of the person or persons for whom the services are performed, that factor suggests control over the worker, especially if the work could be done elsewhere. The worker provided his services to the firm throughout a number of years on a 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. He did not pay rent nor had a significant investment. 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. In addition, the worker's hourly rate of pay also illustrated the firm's financial control. 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. In such instances, the firm assumes the hazard that the services of the worker will be proportionate to the regular payments. This action warrants the assumption that, to protect its investment, the firm has the right to direct and control the performance of the workers.

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 and no benefits. The worker was engaged as a mechanic for the firm's auto repair business. When doing so, the worker was not engaged in a separate business venture. The fact that he was experienced 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.