

SS-8 Determination—Determination for Public Inspection

Occupation

03PMW Repairs/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 worker initiated the request for a determination of her work status as a cleaning person in tax year 2019, for which she received Form 1099-MISC. The firm's business is described as a cleaning business that contracts for cleaning jobs. The firm holds and supervises all the cleaning contracts as well as hiring and supervising all of the workers.

The firm's response, signed by the owner, describes the firm's business as a [REDACTED]. The worker was engaged to maintain and clean six model homes.

The worker stated she was given training and instructions on what, when, and how to perform the work associated with cleaning the model homes. The job assignments were allocated by the firm's owner; and, it was the firm that determined the methods and the tools to be used by the worker to perform the services. Any problems or complaints encountered by the worker were directed to the firm for resolution. The worker's services were rendered Thursdays from 5:00 pm to 10:00 pm and at another location for three to four hours before 6 am. The worker was required to perform the services personally; any additional personnel were hired and paid by the firm.

The firm responded that the training and instructions was the 'scope of services' list provided to the worker. The jobs were the scope of services at the assigned locations. The worker determined the methods by which she performed her job tasks. Any problems or complaints encountered by the worker were directed to the firm for resolution. The services were rendered according to the worker's flexible schedule at the model homes. The worker was required to perform the services personally; however, any additional personnel were hired and paid by the worker and the firm's approval was not required. The firm did state that the worker would be held responsible for any loss or damages.

The worker indicated the firm provided nothing in the [REDACTED] location, but provided all supplies and materials for the [REDACTED] location. The worker furnished the cleaning supplies for the [REDACTED] location. The worker did not lease equipment, space, or a facility. The firm paid the worker an hourly wage for working at the [REDACTED] location and a salary for the [REDACTED] location. The customers paid the firm. The worker was not covered under the firm's workers' compensation insurance policy. The worker was not at risk for a financial loss in this work relationship and she did not establish the level of payment for services provided.

The firm acknowledged that the firm purchased quality vacuum cleaners and then sold them to the worker(s) at a reasonable price. The worker was provided with the keys to the model homes and welcome center as well as the code to the lock box and alarm. The worker furnished equipment and cleaning supplies. The worker did not lease equipment, space, or a facility. The firm paid the worker a lump sum on a monthly basis. The customers paid the firm. The worker was not covered under the firm's workers' compensation insurance policy; however, the firm was bonded and carried liability insurance. The worker was at risk for a financial loss in this work relationship if she damaged her equipment. The worker did not establish level of payment for services provided.

The firm and worker concur that there were no benefits extended to the worker and that either party could terminate the work relationship without incurring a liability or penalty. The firm responded that the worker was performing same or similar services for others during the same time frame; the worker disagreed. The worker indicated she was referred to as an employee; however, the firm indicated the worker was a contractor under the firm's business name.

The worker provided a copy of the Cleaning Service weekly checklist, the job application with the Independent Contractor addendum, copy of a time sheet for hours worked and copies of checks issued by the firm.

Analysis

A worker who is required to comply with another person's instructions about when, where, and how he or she is to work is ordinarily an employee. This 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. Furthermore, the instructions, that show how to reach the desired results, may have been oral and given only once at the beginning of the relationship.

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.

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. Also, workers are assumed to be employees if they are guaranteed a minimum salary or are given a drawing account of a specified amount that need not be repaid when it exceeds earnings.

A person who can realize a profit or suffer a loss as a result of his or her services is generally an independent contractor, while the person who cannot is an employee. "Profit or loss" implies the use of capital by a person in an independent business of his or her own. The risk that a worker will not receive payment for his or her services, however, is common to both independent contractors and employees and, thus, does not constitute a sufficient economic risk to support treatment as an independent contractor. If a worker loses payment from the firm's customer for poor work, the firm shares the risk of such loss. Control of the firm over the worker would be necessary in order to reduce the risk of financial loss to the firm. The opportunity for higher earnings or of gain or loss from a commission arrangement is not considered profit or loss.

The firm's statement that the worker was an independent contractor pursuant to an agreement is without merit. For federal employment tax purposes, it is the actual working relationship that is controlling and not the terms of the contract (oral or written) between the parties.

We have considered the information provided by both parties to this work relationship. 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 and business reputation and to ensure its customers' satisfaction and that its contractual obligations were met. The worker was not operating a separate and distinct business; 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. 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. 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 the firm's business.

CONCLUSION

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 www.irs.gov for more information including Publication 4341 Information Guide for Employers Filing Form 941 or Form 944 Frequently Asked Questions about the Reclassification of Workers as Employees and Publication 15 (Circular E) Employer's Tax Guide.