

SS-8 Determination—Determination for Public Inspection

Occupation

Construction/Technical Services/Trades

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 submitted a Form SS-8 for services performed for the firm as a Plumber from February 2025 until October 2025. The worker filed a Form SS-8 because they believe that they erroneously received a 1099-NEC from the firm.

The worker states that they were an employee of the firm because they were paid an hourly wage, drove the firms vehicles, wore uniforms and followed the firms schedule. There were no written agreements between the parties. There was an oral agreement between the parties.

The firm states that they are a plumbing installation and repair business. The firm hired the worker as a plumber. The firm initially classified the worker as an independent contractor but later realized the worker was a W2 employee. There were no written agreements between the parties. The oral agreement was that the worker would receive a hourly pay and proceed with the firms instructions.

The firm states that the worker received instructions on specific jobs to be completed. The firms owner gave the worker job assignments in person, by phone and through text message. The firms owner determined the methods by which job duties were completed. If the worker encountered any problems or complaints while working, they were required to contact the firm owner. The firm owner would be responsible for problem resolution. The worker completed sales tasks as scheduled 100% at the firm's premises. There were no reports required by the worker. The worker performed services as scheduled 90% at the customers location and 10% at the firms location. The firm did not require the worker to attend meetings. The firm did require the worker to provide services personally. The worker could not hire helpers or substitutes.

The worker states that they received instructions on how to perform services. The firms owner gave the worker job assignments in person, through text message and by phone. The firms owner determined the methods by which job duties were performed. If any problems or complaints were to arise, the firms owner was to be contacted. The firms owner was responsible for the resolution. There were no reports required of the worker. Plumbing services were performed as scheduled 100% of the time at the customers location. The worker was required to attend staff meetings and would not be penalized if not in attendance. The firm did require the worker to personally perform services. The worker had no hiring authority.

The firm states that they provided all plumbing tools, supplies and work vehicle. The worker did not lease any space or equipment. The worker did incur job-related expenses that would be reimbursed by the firm. The firm paid the worker an hourly pay and commission does not apply. The firm did not give the worker access to advance pay. Customers paid the firm. The firm did not carry worker's compensation insurance on the worker. The worker did not take a financial risk or suffer a financial loss while working for the firm. The firm set the rate of pay for services performed and for products, if sold.

The worker states the firm supplied all tools, trucks, uniforms, gas and all materials. The worker did not lease any space or equipment and did not incur any job-related expenses. The firm paid the worker an hourly rate of pay. Customers paid the firm. The worker had no exposure to financial risk or loss. The firm sets the rate of pay for services performed.

The firm states that they did not provide benefits to the worker. The firm or worker could end the work relationship without incurring penalty. The worker did not advertise their services to the public or assemble products at home. The worker was introduced to the firms customers by their name. Services were performed under the firms name. The worker ended the work relationship.

The worker states the firm did not provide benefits to them. The worker or firm can both end the work relationship without penalty. The worker did not perform similar services for others. There is no non-compete agreement in place. Services were performed under the firms name. The worker ended the work relationship.

Analysis

The question of whether an individual is an independent contractor or an employee is one that is determined through consideration of the facts of a particular case along with the application of law and regulations for worker classification issues, known as “common law.”

Generally, the relationship of employer and employee exists when the person for whom the services are performed has the right to control and direct the individual who performs the services, not only as to what is to be done, but also how it is to be done. It is not necessary that the employer actually direct or control the individual, it is sufficient if he or she has the right to do so.

Section 31.3121(d)-1(a)(3) of the regulations provides that if the relationship of an employer and employee exists, the designation or description of the parties as anything other than that of employer and employee is immaterial. Thus, if an employer-employee relationship exists, any contractual designation of the employee as a partner, co-adventurer, agent, or independent contractor must be disregarded.

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. We must examine the relationship of the worker and the business. We consider 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. The degree of importance of each factor varies depending on the occupation and the context in which the services are performed. 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. Furthermore, whether there is an employment relationship is a question of fact and not subject to negotiation between the parties.

Training a worker by requiring an experienced employee to work with the worker, by corresponding with the worker, by requiring the worker to attend meetings, or by using other methods, indicates that the person or persons for whom the services are performed want the services performed in a particular method or manner. This is true even if the training was only given once at the beginning of the work relationship.

The establishment of set hours of work by the person or persons for whom the services are performed is a factor indicating control. 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.

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.

The right to discharge a worker is a factor indicating that the worker is an employee and the person possessing the right is an employer. An employer exercises control through the threat of dismissal, which causes the worker to obey the employer’s instructions. An independent contractor, on the other hand, cannot be fired so long as the independent contractor produces a result that meets the contract specifications.

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. 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. Both parties retained the right to terminate the work relationship at any time without incurring a liability. There is no evidence to suggest the worker performed similar services for others as an independent contractor or advertised business services to the general public during the term of this work relationship. The classification of a worker as an independent contractor should not be based primarily on the fact that a worker’s services may be used on a temporary, part-time, or as-needed basis. As noted above, common law factors are considered when examining the worker classification issue.

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.

The firm can obtain additional information related to worker classification online at www.irs.gov; Publication 4341.