

SS-8 Determination—Determination for Public Inspection

Occupation 03TEC Technicians	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 worker initiated the request for a determination of his work status as a service technician for the installation and repair of water-related consumer products in tax years 2017 and 2018, for which he received Form 1099-MISC. He believes he is an employee because he received his schedule from the company, company uniforms, and went to the company every morning for supplies.

The firm's response was signed by the president of the company. The firm's business is water purifier installation and repair; the worker provided services as an installer and was paid for the contract work completed.

The worker responded that he was given a specific two-week on-the-job training and three days of product training in the office with all instructions given in writing, via text, and/or phone calls. The job assignments were provided on a printed job list every morning as well as a via a mobile app. The firm determined the methods by which the worker's services were performed; any problems or complaints encountered by the worker were directed to the firm for resolution. The worker was required to complete a daily summary report. The worker was required to report to office every morning by 8 am to review the previous day. His services were rendered at the customer location averaging an hour at each location. The worker was not required to perform the services personally; additional personnel were hired and paid by the firm.

The firm indicated there was no specific training and instructions given. The job assignments were via online communications. The firm stated the worker determined the methods by which the worker's services were performed. Any problems or complaints encountered by the worker were resolved by the worker. The firm responded that the worker's services were rendered at various locations with flexible hours/schedule. The worker was required to perform the services personally; any additional personnel were hired and paid by the worker and he was not reimbursed.

The workers stated the firm provided the consumer merchandise, installation and service repair parts, instruction manuals, vehicles for certain areas, and the warehouse and office locations. The worker furnished generic hand tools. The worker did not lease equipment, space, or a facility. The worker incurred expenses for parking fees, tolls, parts (when firm was out of stock) and gas; he was reimbursed for everything but the gas. The worker was paid piecework; the customers paid the firm. The worker was not covered under the firm's workers' compensation insurance policy. He indicated he was at risk for a financial loss in this work relationship if he had damage to his personal vehicle, loss or damage to equipment, or if he sustained an injury. The worker did not establish level of payment for services provided or products sold.

The firm response indicated the firm provided supplies and materials; and, the worker furnished tools and equipment. The worker did not lease equipment, space, or a facility. He incurred expenses for labor and tools; any additional materials were reimbursed by the firm. The worker was paid a commission and there was no guaranteed minimum compensation. The customers paid the firm. The firm indicated the worker was not covered under the firm's workers' compensation insurance policy. The worker was thought to be at risk for a financial loss in this work relationship as related to tools and equipment. The worker established the level of payment for services provided or products sold according to contract.

Both parties concurred that there were no benefits extended to the worker. The worker responded that if the relationship ceased he could be held liable for property damage and unreturned parts. The worker stated he was not performing same or similar services for others during the same time frame. The firm indicated that either party could terminate the work relationship without incurring a liability or penalty. The firm did respond that the worker was performing same or similar services for others during the same time frame and the firm's approval was not required.

The 'Service Agreement' between the parties was entered into on January 1, 2018 and addressed the following: the worker was to provide installation, removal, repair, replacement, and support as related to firm's sales; the territory was defined to three states; worker completed the work order for services which the customer signed upon completion; attached were the rates and schedules for payment (in a different language), and a non-compete clause for one-year.

Analysis

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.

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.

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 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.

A requirement that the worker submit regular or written reports to the person or persons for whom the services are performed indicates a degree of control.

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. Also, if the firm has the right to control the equipment, it is unlikely the worker had an investment in facilities.

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

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.