

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

Information provided indicated the firm builds hi-tech dog houses. The worker performed services for the firm in 2016 and 2017 as a field technician. The firm stated his duties included, inspection, maintenance and technical services on the dog house structures. The firm reported the income paid on Form 1099-MISC at year end. The firm provided a copy of the consulting agreement between parties. The firm indicated the worker could accept or reject the available projects. Services were performed wherever the fixed structures were located. Once a project was accepted, the worker determined how the work was performed. He was required to input his hours on the firm payroll company website, and was paid on a biweekly basis. The firm indicated (and per contract) he was paid by the hour. The customer paid the firm. The worker was required to perform his services personally. Per the contract, he could not reassign the work. The contract also held a non compete clause. The worker could perform other work, as long as it did not interfere with his duties to the firm. The firm provided use of a company vehicle, specialty tools sets, and reimbursed the worker for preapproved purchases made. The customer paid the firm. Both parties were required to give due notice of the work relationship was going to be terminated. The firm indicated they terminated the work relationship.

The worker indicated he was a field technician for the firm, responsible for cleaning, fixing and building high tech dog houses. The worker stated training was provided by the firm's CEO and COO. He was required to company administrative system via personal smart phone. He indicated his start time was between six am and seven am. He would pick up the company van, and proceed to check forty-one houses in various locations. He performed other job duties as assigned also. The worker indicated he was required to attend company staff meetings. He agreed he was required to perform his services personally. The worker indicated the firm provided the company van, work shirts, company cap, and company credit card. If purchases were made when he didn't have the company card, he provided the receipts and was reimbursed. The worker agreed he was paid by the hour and the customer paid the firm.

Analysis

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.

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.

Therefore, your 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 applied the above law to the information submitted. 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.

Evidence of control generally falls into three categories: behavioral control, financial control, and relationship of the parties, which are collectively referred to as the categories of evidence. In weighing the evidence, careful consideration has been given to the factors outlined below.

Factors that illustrate whether there is a right to control how a worker performs a task include training and instructions. In this case, you retained the right to change the worker's methods and to direct the worker to the extent necessary to protect your financial investment.

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.

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 your business. Both parties retained the right to terminate the work relationship at any time without incurring a liability.

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. Evidence provided by both parties indicated all work was performed under the firm's business name, for the firm's clients. The worker was paid by the hour, on a biweekly basis, indicating no opportunity for profit or loss. The firm provided a company credit card, company vehicle and reimbursed for other purchases made when a receipt was provided for said purchases. Another indication the worker incurred no business or operating expenses in the services provided for the firm.

Per the contract submitted by the firm, the worker was required to perform his services personally, and was not allowed to subcontract out or reassign any of the work. The worker was not allowed to enter into any work that may be competition with the firm (Section 12), or do any work that would interfere with his obligation to the firm (priority over the worker's time). These facts alone, indicate the worker was not an independent contractor.