

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 an automotive technician in tax years 2018 and 2019, for which he received Form 1099-MISC. The firm's business is described as automotive repairs and maintenance.

The firm's response, signed by the firm's president, identifies the firm's business as automobile service and repair. The worker provided automobile repair services.

The worker stated he was given training and instructions as to company policies and standards and to work with the service manager. The firm's service manager 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's services were rendered at the firm's location Monday through Friday; he would open shop, work on cars, and in between job he would clean the shop. The worker was required to perform the services personally; any additional personnel were hired and paid by the firm.

According to the firm, there was no training and/or instructions given since the worker was a skilled mechanic. The job assignments were disseminated by the service manager. The worker performed services on vehicles that came into the firm; but, he had no say in the business operations of the firm. The worker determined the methods by which he performed the jobs; any problems or complaints encountered by the worker were directed to the firm for resolution although worker responsible for faulty repairs. The worker was required to be at work/at the firm's place of business for 8am, he could leave for personal business and could leave when there was no work, with the shop closing at 5pm. The worker was required to perform the services personally.

The worker responded that the firm provided the building, lifts, and specialized equipment. The worker furnished and incurred the expense for [redacted] and hand tools. He did not lease equipment, space, or a facility. The firm paid the worker an hourly wage and the customers paid the firm for the parts and service. The worker was not covered under the firm's workers' compensation insurance policy. The worker indicated he was at risk for a financial loss in this work relationship if he incurred an injury. The firm's owner established the level of payment for services provided or products sold.

The firm acknowledged providing the parts needed for the repairs; and, the worker furnished his tools and uniform. The worker did not lease equipment, space, or a facility. The firm indicated the worker was paid an hourly wage on a bi-weekly basis only for the hours he worked; the firm received and processed all payments from the customers which was for the convenience of the customers. The worker was not covered under the firm's workers' compensation insurance policy. The firm stated the worker was at risk for a financial loss in this work relationship if the worker incurred loss or damage to his tools or if a vehicle came back and the worker had to repair it, for which he was not paid. The worker did not establish the level of payment for services provided or products sold – it was the firm's automotive repair computer system.

The worker indicated he was told he would receive the benefit of two paid holidays after one year of service; the firm indicated there were no benefits available to the worker. Either party could terminate the work relationship without incurring a liability or penalty. The worker was not performing same or similar services for others during the same time frame. The worker stated he was represented as an employee; the firm responded that he was referred to as the mechanic on duty. The work relationship ended when the worker relocated.

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.

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. Work done off the premises of the person or persons receiving the services, such as at the office of the worker, indicates some freedom from control. However, this fact by itself does not mean that the worker is not an employee. The importance of this factor depends on the nature of the service involved and the extent to which an employer generally would require that employees perform such services on the employer's premises.

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 fact that the person or persons for whom the services are performed furnish significant tools, materials, and other equipment tends to show the existence of an employer-employee relationship.

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 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.