

SS-8 Determination—Determination for Public Inspection

Occupation Construction/Technical Services/Trades	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 submitted a request for a determination of worker status in regard to services performed for the firm during tax year 2020, as an autobody technician. The worker's services included autobody repair and automotive glass installation. The firm issued the worker Form 1099-MISC and a W-2 for tax year 2020. The worker filed Form SS-8, as they disagree with their worker status as an independent contractor. The worker did not provide a written agreement that was signed between the two parties. The firm provided specific training and/or instruction to the worker. The worker received assignments from the firm. The firm determined the methods by which assignments were performed. The worker was required to contact the firm for problem resolution. The worker was not required to attend meetings. Reports were not required. The worker was required to personally perform services. The firm was responsible for the hiring and paying of substitutes or helpers. The firm provided a frame machine, paint, and supplies. The worker provided a toolbox and hand tools. The worker did not lease any equipment, space, or a facility. The worker received a flat rate of pay for each job completed. The worker did not establish the level of payment for services provided. No benefits were made available to the worker. The work relationship could be terminated by either party without incurring a liability or penalty. The work relationship has ended.

The firm's response states that the business specializes in automotive body work and glass installation. The firm describes the worker's services as an automotive body repair technician. The firm classified the worker as an independent contractor due to the worker being able to set his schedule. The firm did not provide specific training and/or instruction to the worker. The worker was able to choose his work assignments. The firm determined the methods by which assignments were performed. The worker was required to contact the firm for complaint or problem resolution. The worker provided services at the firm's premises. The worker was not required to personally perform services. The worker was responsible for the hiring of substitutes or helpers. The firm provided all supplies needed. The worker provided tools and equipment. The worker leased equipment, space, or a facility for the firm. The fee for the space was \$5 per billed hr. The worker was paid a commission. The firm covered the worker under its worker's compensation insurance policy. The firm established the level of payment for the services provided by the worker. All customers paid the firm. No benefits were made available to the worker. The firm indicated that the worker performed similar services for others during the period in question. The work relationship could be terminated by either party without incurring a liability or penalty. The work relationship has ended.

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 they have 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. Furthermore, whether there is an employment relationship is a question of fact and not subject to negotiation between the parties.

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 services performed by the worker were integral to the payer's business operation. The payer provided work assignments and was responsible for problem or complaint resolution. These facts are evidence that the payer retained the right to direct and control the worker to the extent necessary to ensure satisfactory job performance in a manner acceptable to the payer. Based on the worker's education, past work experience, and work ethic the payer may not have needed to frequently exercise its right to direct and control the worker; however, the facts evidence the payer retained the right to do so if needed.

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 payer 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 payer 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. In this case, the worker did not invest capital or assume business risks. 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. Based on the rate of pay arrangement the worker could not realize a profit or incur a loss.

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