

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 is seeking a determination of worker classification for services performed for the firm as Service Technician from January 2024 to December 2024. The worker filed a form SS8 because they believe they were erroneously classified as independent contractors.

The worker believes that they were an employee because they clocked in and out on a computer system, the firm set their scheduling for them they are paid an hourly rate by the firm and the firm also provided equipment.

The firm states that the worker was hired as an independent contractor. They provides tech support to field technicians working on commercial kitchen equipment.

The firm states that they did not provide the training the worker received. Training was provided by the manufacturers listed as follows [REDACTED] and [REDACTED]. The supervisor [REDACTED] gave the worker instructions via email, phone calls and text messages. If worker ever encountered inconveniences or complaints, they were to contact President [REDACTED]. No reports needed to be completed by the worker. Per the firm worker was supposed to perform services as scheduled. Per the firm worker was to perform services in workers office or shop. Workers were supposed to attend webinars The workers could not hire helpers or substitutes and were not responsible for their payment. Hiring process answered questions as not applicable. The worker states training was done on the software utilized to make phone calls and prepare services orders for each call, documenting what occurred. Manufacturers provided training on their equipment & how to diagnose and/or repair. Worker states that assignments were provided by the firm [REDACTED] via emails. The worker states the determination of the assignments given were done by the firm. The worker states that problems or complaints depending on severity were escalated to high management. The worker was to attend staff meetings and provide service personally. The worker did not have the ability to provide substitutes or helpers.

The firm of equipment goes as follows computer, monitor, keyboard, internet, docking station and phone. Worker list of equipment was to provide desk and chair per firm. Firm states manufacturers such as [REDACTED] and [REDACTED] provided equipment for training. The worker does not lease the equipment. As per the firm workers' expenses incurred by the worker in performances of duties for the firm were office supplies and travel expenses. Expenses reimbursement depends on need. The worker received hourly wages from the firm per firm. The customer pays the firm. The worker states the firm provided equipment such as computers, monitors, desk phones, dock station, commercial coffee pots for use in diagnosis equipment in field. Workers state that no equipment was provided by another party, workers did not lease equipment, space or facility. Workers stated that expenses incurred by the worker in performance of services for the firm primarily travel expenses when they are required to travel to attend training in other states. Expenses reimbursed by the firm as incurred and submitted usually around \$300 to \$400 dollars per year. Worker was paid hourly as per the worker. Workers could not request advanced pay. The customer pays the firm for services the firm does not carry workers compensation insurance for the worker. The worker is not taking financial risk by performing services.

The firm states that there were no benefits provided to the worker. It is stated that both parties could terminate their relationship without penalties or liabilities. It's also stated that the worker does not perform similar services for other firms. There was no non-compete agreements in place between the firm and worker. The worker did not advertise their services to the public or for the firm. The firm does not introduce the worker to the customers. Services were performed under firm's name. Contract ended and that is how the work relationship was terminated. The worker states benefits were received by the firm such as paid vacation time and holidays. The worker also states that terminating the work relationship between the firm and worker would be subject to penalty and liability. The worker sis does not perform similar services for other firms. The worker did not advertise service provided to the public. The worker states they were introduced to customers as employee and all services were provided under firms name.

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.

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, coadventurer, agent, or independent contractor must be disregarded.

Therefore, a statement that a worker is an independent contractor pursuant to a written or verbal 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. Furthermore, whether there is an employment relationship is a question of fact and not subject to negotiation between the parties.

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. In this case, the firm required the worker to personally perform services. Furthermore, the services performed by the worker were integral to the firm's business operation. The firm provided work assignments by virtue of the customers served, required the worker to report on services performed, and assumed responsibility for problem resolution. These facts evidence the firm retained the right to direct and control the worker to the extent necessary to ensure satisfactory job performance in a manner acceptable to the firm. Based on the worker's education, past work experience, and work ethic the firm may not have needed to frequently exercise its right to direct and control the worker; however, the facts evidence the firm retained the right to do so if needed.

Payment by the hour, day, 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. 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 hourly 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 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.