

SS-8 Determination—Determination for Public Inspection

Occupation
03TRA Framer

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 firm is in the business of providing residential framing. The worker was engaged as a framer. He received a 2017 Form 1099-MISC for his services; he previously had been paid for many years on a Form 1099-MISC under an ITIN (individual taxpayer identification number). There was no written agreement.

The firm indicated that the worker had specific skills in this line of work. He was given his work assignment, i.e. where to go, via a phone call from the firm. The worker noted that the firm determined the methods by which the assignments were performed; the firm, however, noted that the customers did. Both parties agreed that the firm would be contacted if any issues or problems arose. There were no reports. The worker worked weekdays and sometimes Saturdays, framing houses at various locations designated by the firm. The firm noted that he worked hours according to the needs of the job. There were no meetings. Both parties agreed that the worker was required to provide the services personally. Only the worker noted that the firm would hire and pay any substitute workers.

The worker noted that the firm provided large tools needed for framing. Both parties agreed that the worker provided a tool belt, helmet, small tools, and other preferred items to use. He was not reimbursed by the firm. The worker indicated that he was most recently paid by the day but previously had been paid by the hour. The firm noted that the worker was paid commission and piece work. No evidence was provided to support this method of payment. Both parties agreed that the customer paid the firm and that the firm established the level of payment for services.

Both the firm and the worker agreed that there were no benefits and that either party could terminate the relationship without incurring a liability. The worker did not perform similar services for others though the firm did not know. The relationship has ended.

Analysis

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. The relationship of the worker and the business must be examined. 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 should be considered. 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.

Factors that illustrate whether there is a right to control how a worker performs a task include training and instructions. 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. The firm obtained the framing jobs and engaged the worker as a framer. While the worker may not have required specific training as he was skilled in this line of work, the firm gave him the job assignments by being told where to go, and presumably, what needed to be done and when to report to the job. 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. In this instant case, the worker may have performed his tasks without receiving instructions because he was highly proficient and conscientious or because the duties were so simple or familiar. 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. The worker worked set scheduled hours as part of a framing crew and likely his hours might have varied dependent on the job. If the nature of the occupation makes fixed hours impractical, a requirement that workers be on the job at certain times is an element of control. Also material in this case was the fact that the worker was required to provide the services personally. This indicated that the firm was interested not only in the results but also the methods to accomplish them. The worker provided his services on a continuous basis and not just on a one-time event. 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.

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. It is acknowledged that the worker provided some tools of his trade. However, the 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.

There was disagreement about how the worker was compensated. The firm had indicated that the worker was paid a commission as well as piece work. No documentation was provided to back up that claim, such as a job bid, estimate, invoices, etc. Based on the occupation -a framer at a job site - this was not reasonable.

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. There were no benefits and there was no written agreement. The worker was a framer for the firm's framing construction business. When doing so, the worker was not engaged in an separate business venture. While this case involved one year, evidence suggested that the worker worked for the firm for many years. 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.

Based on the above analysis, we conclude that the firm had the right to exercise direction and control over the worker for the entire work relationship 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 Publication 4341 for guidance and instructions for firm compliance.