

SS-8 Determination—Determination for Public Inspection

Occupation 03TRA Tradespersons	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 is a wine making/sales business. The worker performed services in 2017 and 2018 as a harvest intern. The firm reported the income on Form 1099-MISC as they stated it was industry practice to do so as it is a seasonal/temporary position. The firm it allows the worker to gain experience in the wine industry from harvest through fermentation. An internship is usually scheduled annually depending on the winery's needs. Their hours are not scheduled, but in order to get the experience, they work similar hours as other cellar employees. The worker was eventually hired, in a different capacity and issued Form W-2 for those services. The firm indicated the work was performed on firm premises. The worker was to perform the services personally. The firm indicated the worker was paid by the hour, the customer paid the firm. The firm did not carry workmen's compensation insurance. The firm determined the rate of pay for the worker. Either party could terminate the work relationship without incurring a penalty or liability. The worker did not perform similar services for others. At the end of harvest, the worker was offered employment in a different capacity, then later fired.

The worker indicated he received training in the various needs of the harvest such as crushing, sorting table, pump overs, cleaning, punch downs, safety etc. he clocked in to provide work hours for the firm. Training and instructions were given from the firm's general manager. A list of daily tasks were given each morning to complete before the work day finished. All work was performed on the firm premises, utilizing the firm's equipment, supplies and materials. The worker agreed he was paid by the hour, and paid overtime when he exceeded forty hours, the customer paid the firm. He agreed the firm determined the rate of pay given. He indicated he was given sick pay, paid holidays and bonuses. He indicated the job completed.

ANALYSIS

The question of whether an individual is an independent contractor or an employee is one that is determined through consideration of the facts of a particular case along with the application of law and regulations for worker classification issues, known as "common law." Common law flows chiefly from court decisions and is a major part of the justice system of the United States. Under the common law, the treatment of a worker as an independent contractor or an employee originates from the legal definitions developed in the law and it depends on the payer's right to direct and control the worker in the performance of his or her duties. Section 3121(d)(2) of the Code provides that the term "employee" means any individual defined as an employee by using the usual common law rules.

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.

- 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.
- Training a worker by requiring an experienced employee to work with the worker, by corresponding with the worker, by requiring the worker to attend meetings, or by using other methods, indicates that the person or persons for whom the services are performed want the services performed in a particular method or manner. This is true even if the training was only given once at the beginning of the work relationship.

Analysis

-Payment by the hour, week, or month generally points to an employer-employee relationship.

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. An internship indicates the person is in training to learn a specific occupation. An independent contractor is a person who owns and operates their own business, advertises and charges for their services. The fact the work is temporary or on a seasonal basis, does make an individual an independent contractor either. Many occupations are performed seasonally or on a part time basis, the staff are still under the direction and control of the firm. The firm trained the worker what was required and how they expected it to be done. The firm provided the equipment, supplies and management personal (or other skilled employees) to train the worker. The worker was paid by the hour for the work performed. He was an employee of the firm.