

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 initiated the request for a determination of his work status; he was hired for his mechanical expertise for collector motorcycles in tax year 2020, for which he received Form 1099-MISC. The firm's business is described as a collector vehicle dealer.

The firm's response, signed by the owner, describes the business as a motor vehicle dealership. The worker was engaged as a laborer/helper on motorcycles, acting as an 'expiditer'.

The worker responded that the job assignments came from the firm/owner; and, it was the firm that 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 10am to 7pm Monday through Friday on the firm's premises. The worker was required to perform the services personally; any additional personnel were hired and paid by the firm.

The firm indicated there were no specific trainings and instructions given, since the worker provided services to others. The job assignments were limited to broad task lists provided on a weekly basis. The worker determined the methods by which he performed his services. The worker directed any problems or complaints to the firm for resolution. The worker's services were rendered 95% of the time on the firm's premises and the remainder of the time at the worker's facility. There was no set schedule; the flexible hours and his availability were specified by the worker on a weekly basis. The worker was required to perform the services personally.

The firm and worker acknowledge the firm provided specialty tools and parts. The worker furnished basic tools, as needed; and, he did not incur expenses or lease equipment, space, or a facility;. The firm paid the worker an hourly wage. The customers paid the firm. It is unknown if the worker was covered under the firm's workers' compensation insurance policy. The worker was not at risk for a financial loss in this work relationship. The worker stated he did not establish level of payment for services provided or products sold; however, the firm responded the worker and firm negotiated the level of payment for services provided or products sold.

Both parties concur there were no benefits extended to the worker. The worker replied that either party could terminate the work relationship without incurring a liability or penalty; the firm did not respond. According to the firm, the worker was performing same or similar services for others during the same time frame; the worker did not agree. The firm stated the worker was represented to customers as a "helper", "temp" or "expiditer". The firm responded that at the conclusion of 2020 the worker was offered a full-time employment position with the firm beginning in 2021, as a W-2 employee with a far different work relationship.

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.

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.

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.

For federal income tax withholding and social security, Medicare, and federal unemployment (FUTA) tax purposes, there are no differences among full-time employees, part-time employees, and employees hired for short periods. It does not matter whether the worker has another job or has the maximum amount of social security tax withheld by another employer.

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.

CONCLUSION

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. 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.