

SS-8 Determination—Determination for Public Inspection

Occupation

04MAN Overseers/Persons in Charge

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**

Information provided indicates the firm is an event, cultural and arts center. The firm indicated the worker had performed services as a janitor for 2015 and 2016. The worker indicated he performed services as an Venue Manager for those tax years. The firm reported the income on Form 1099-MISC for both tax years. The firm stated he did janitorial services and odd jobs as needed from room setting for events, markets etc. The worker often came back to work when things got busy in the day, but the firm made it clear to him that it was not required. The worker kept his own log book, even though he was asked to use Google docs, he did not share his log book with the firm. He simply gave the firm the hours he worked. In 2016 they offered him to be a W-2 employee and he refused. The worker quit shortly after that. He was instructed on the job of the janitorial things that needed to be fixed. He set his own hours, he preferred mornings. Services were performed on premises. Weekly meetings were held, but not mandatory. He was required to perform his services personally. The firm indicated it provided all cleaning supplies, building tools, ladders etc. The worker was paid by the hour for the services performed. The customer paid the firm. The firm indicated the worker determined the rate charged. The worker quit without notice.

The worker indicated he performed services as a venue manager for the firm. He indicated he managed the day to day operations. He had been given direct training from the owners. Verbal or text assignments were given. He indicated he began work at nine am. His duties included cleaning, stocking inventory, receiving orders and representing the business to customers and vendors. The worker agreed all work was performed on the firm premises. He agreed there were weekly staff meetings, with no penalty if not attended. he indicated he was to perform his services personally. He agreed the firm provided all equipment and supplies. He was paid by the hour, the customers paid the firm. Either party could terminate the work relationship without incurring a penalty or liability. He indicated he was presented as an employee of the firm. He agreed he quit.

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.

-A continuing relationship between the worker and the person or persons for whom the services are performed indicates that an employer-employee relationship.

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

-The fact that the person or persons for whom the services are performed furnish significant tools, materials, and other equipment tends to show the existence of an employer-employee relationship.

Analysis

continued..

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. Whether the worker's title was janitor or manager, whether he worked part time or full time it is evidenced that the work was performed on the firm's premises, as directed and assigned by the firm. The firm stated they had offered him an employee position, to continue the same services he was performing. It is not a matter of choice if one wants to be an employee or an independent contractor. He either owns his own company to provide the services rendered or he is an employee. The firm has the ultimate responsibility to correctly classify the people performing services for them. The firm provided all equipment and supplies for the work to be performed. The worker was paid by the hour for the services performed. The customer paid the firm for the services received.