

SS-8 Determination—Determination for Public Inspection

Occupation 04MAN Managers/Supervisors	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

The firm is in the business of renting residential properties. The worker was engaged as a residential property manager who maintained the property, showed units, and secured tenants. He received a Form 1099-MISC for services in 2016 and 2017. There was no written agreement.

According to the worker, the firm provided instructions on how the rental cottages needed to look on the inside; however, the firm indicated that it provided no instructions as the worker was already knowledgeable in this line of work. The firm, however, agreed that it provided a general list of duties and the guest schedule as well as landscaping projects. Each party indicated that the other determined the methods by which the assignments were performed; the firm noted that it would be contacted for any issues or problems, dependent on the type and/or severity. Both agreed that the worker submitted reports, such as weekly expense reports, housekeeping payroll reports and commission reports. The worker's routine included leaf blowing, watering plants, trapping gophers, washing laundry, checking the guest schedule, scheduling cleaning staff, maintaining hot tubs, and stocking cleaning supplies, with all his services performed at the firm's premises. The firm noted that the worker had no set schedule only that all his assigned duties should be performed. Only the worker mentioned that he met with firm (owner or assistants) when they were on-site to assess work and address any deficiencies. Only the worker noted that he was to provide the services personally; the firm paid the housekeepers and a landscape helper hired with the firm's approval. It was the firm that trained the housekeepers. The firm noted that other workers were hired and paid dependent on the firm's approval for any work or project.

The firm provided the property, tools, phone, utility vehicle, leaf blower and most supplies. The worker supplied some tools and a vehicle. The worker was allowed to live in one of the rental units in exchange for caring for the landscaping plants. Initially the worker submitted receipts and was reimbursed by the firm; then, he was provided with a firm credit card for expenses. He received commissions based on rental income, a set monthly property management fee as well as a rental unit. He had no other economic risk other than the loss of that income. The firm noted that the worker would be responsible for any damage. Both agreed that the customer paid the firm. The firm noted that the level of payment for services was negotiated with the worker; the worker noted that the firm that established the rental fees.

Both the firm and the worker agreed that there were no benefits. Either party could terminate the relationship without incurring a liability though firm indicated that the worker could lose commissions and a place a live. The worker did not perform similar services for others; the firm did not know but noted that he could work for others. He was the (firm) representative and property manager. Both parties agreed that the relationship ended when the worker terminated the contract.

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. 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 guests, scheduled the rentals and engaged the worker as a property manager. He was assigned a list of general duties, provided with a rental unit, and given considerable latitude regarding his work schedule with the exception of certain necessary duties involving the scheduled guests. While the establishment of set hours of work by the person or persons for whom the services are performed is a factor indicating control, 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. Another element illustrating the firm's ability to control the worker was the fact that the worker performed his services at the firm's location. If the work is performed on the premises of the person or persons for whom the services are performed, that factor suggests control over the worker, especially if the work could be done elsewhere. In this case, the worker had to work at the firm's location as a property manager in order to fulfill his assigned duties whether those duties involved ground maintenance or guest requests. In addition, he worked on a continuous basis throughout the entire time period. 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 was the firm that had the investment in the property, rental units, equipment and supplies. 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. Control of the firm over the worker would be necessary in order to reduce the risk of financial loss to the firm. The worker received a fixed monthly amount, a place to live and commission on the rentals. 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. The fact that the worker received a commission also did not support a finding of independent contractor as the opportunity for higher earnings or of gain or loss from a commission arrangement is not considered profit or 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. There were no benefits and there was no written agreement. The worker was engaged as a property manager who provided customer services for the firm's guests. When doing so, the worker was not engaged in an separate business venture. He did not provide property management services for others during the same time period. His services were essential to the firm's continuing business operations. 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.