

SS-8 Determination—Determination for Public Inspection

Occupation

04MAN Managers/Supervisors

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 a limited liability company that operates a continuing care retirement community. The worker was engaged by the firm as an IT manager at the onset of the firm's business. There was no written agreement between the two parties.

The worker received his instructions on what duties to perform from the firm. The worker was already qualified in this field and did not need training from the firm. One of the firm's principals oversaw the worker's services and the worker ultimately relied upon this individual to resolve any problems or complaints that he could not resolve. The worker attended sales meetings, one on one with the Director, and one on one with outside vendors on the firm's behalf.

The firm provided the worker with a computer, software and a work phone. The worker was reimbursed by the firm for software and hardware along with travel expenses he incurred in the performance of his duties. The worker was paid on an hourly basis according to the hours he was required to submit to the firm. Customers paid the firm directly for the services they received. The worker did not have a significant investment in the performance of his duties.

The worker received no benefits while he performed his services. Either party could terminate the work relationship without incurring a liability. The worker did not perform similar services for others at the same time he performed services for the firm. The worker stated he was given company business cards with his name on them. The firm discharged the worker from his services.

Analysis

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.

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. In the instant case, the fact the worker was represented as the firm's IT manager demonstrated the worker's services were integrated into the firm's daily operations of their business.

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. In the instant case, the worker received his assignments from the firm and one of the firm's principals oversaw his duties which showed control over the worker. This was further demonstrated by the fact the individual that oversaw the worker's duties stated he treated the worker as an employee.

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. In the instant case, the worker was paid by the hour according to the time he was required to submit to the firm.

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. In the instant case, the worker could not suffer a significant loss as operating their own business. The worker did not have a significant investment in the services he performed for the firm.

The worker was an employee according to common law. The information provided by both parties showed the worker was given his assignments by the firm. The worker ultimately relied upon the firm to resolve his problems and complaints as one of the principals of the firm oversaw the services the worker performed which showed control over the worker. The worker was required to submit the hours he performed his services and what services the worker actually performed to the firm which demonstrated control over the worker. The worker did not have a significant investment to provide his services as the firm reimbursed the worker for hardware and software and travel he needed in the performance of his duties. The worker was paid on an hourly basis which demonstrated financial control over the worker. One of the principals of the firm stated the worker was treated as an employee in the performance of his duties. The fact the firm could discharge the worker showed control over the worker through the threat of dismissal.

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.

Please go to www.irs.gov for further information.

Firm: Publication 4341

Worker: Notice 989