

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 corporation which is a communication firm that specializes in the strategic needs of research based organizations. The firm engaged the worker as a project manager to work with the firm's clients on marketing and design projects. There was no written agreement between the two parties. The worker filled out an application for the position.

The worker was not trained how to perform her services. The worker received her assignments from the firm. The worker stated her manager determined how the assignments should be performed and the firm stated the worker determined how the assignments should be performed. The worker relied upon the accounts manager to resolve her problems and complaints. The worker was required to submit press summaries and client briefs to the firm. The worker stated she performed her services during the firm's general working hours. The worker stated she performed all of her services at the firm's location. The worker stated she was required to perform her services personally and the firm stated she wasn't required to perform her services personally.

The firm provided the worker with an office, office supplies and equipment. The worker did not lease any space to perform her services. The worker stated her only expense she incurred was her cell phone expense. The firm stated she had the following expenses travel, research, phone, computer, and office expenses. The firm stated the worker invoiced them and the worker stated she was paid at a rate of \$50/hr. The customers paid the firm for the services they received. The worker stated she did not establish the level of payment for the services provided or the product sold, the firm stated the worker did establish this level.

The worker received no benefits. Either party could terminate the relationship without incurring a liability. The worker stated she did not perform similar services for others at the same time she performed services for the firm but the firm said the worker did perform similar services for others. The firm stated the worker was represented as a contractor who performed services under her own name and the worker stated she performed services under the firm's business name. The worker stated the company dissolved.

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 worker performed services for the firm's clients according to the assignments that were given to her by the firm. This demonstrated the worker's services were integrated into the firm's daily operations as an employee.

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 was required to fill out an application. The fact the worker filled out an application and listed her qualifications demonstrated the firm was looking for a worker that met their needs as an employer. Consequently, the worker met the firm's qualifications and met the education requirements to work independently without training from the firm.

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 which was set by the firm which showed the firm had financial control over the work relationship.

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 was an employee according to common law. The information provided by both parties showed the worker was required to fill out an application for the position which demonstrated the firm was looking for a worker that met their qualifications as an employer. The fact the worker received her assignments from the firm showed control over the worker's services. The worker depended upon the firm as an employer to resolve her problems and complaints. The firm had the financial investment as the worker stated the firm provided with a location to perform her services and with the office equipment and supplies she needed to fulfill her services. The firm had the potential for a significant loss as the firm set the rate to charge the customers and then was responsible to collect the amount they charged. The worker stated she performed her services for the firm's clients under the firm's business name.

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