

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 in the business of operating a lodging facility. The worker was engaged as a manager who performed duties as assigned by the firm. She received a Form 1099-MISC for her services; she continued to work in 2018 as well. There was no written agreement.

The firm indicated that it provided no training or instructions. The worker noted that she was provided with an employee handbook as well as trained on answering the phones and greeting the clients. The worker was given a list of rooms to clean by the firm as well as a daily to-do list. The worker noted that the firm determined the methods by which the assignments were performed and would be contacted if any issues or problems arose. The worker prepared a checklist after units were cleaned; the firm's owner checked over all messages to and from guests. The worker may have provided her services based upon her availability; however, the worker worked set scheduled days and hours according to a posted schedule by the firm. In addition, she punched a time clock as well. All of her services were performed at the firm's premises. There were no meetings; the worker disagreed and indicated that there were staff meetings. Both parties agreed that the worker was to perform her services personally with only the firm hiring and paying others.

The worker noted that the firm provided the computer, office supplies and cleaning supplies. The worker was reimbursed by the firm for anything bought for the hotel. She was paid an hourly rate and had no other economic risk. The customer paid the firm. There was no workers' compensation insurance carried on the worker, according to firm. Each party indicated that the other established the level of payment for services.

Both agreed that there were no benefits. Either party could terminate the relationship without incurring a liability. The worker did not perform similar services for others. The worker ran the airbnb site, responding to messages as well as being responsible for pictures used to promote the firm. The firm chose all new websites. The worker informed the owner upon completion of information on the new sites. The worker ran the firm's downtown hotel from the office where she worked. The relationship has ended.

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 engaged the worker to provide a variety of duties. She was provided with training, even if just initially. In addition, she was provided with an employee handbook as well. Training a worker by requiring an experienced employee to work with the worker, by corresponding with the worker, by requiring the worker to attend meetings, or by using other methods, indicates that the person or persons for whom the services are performed want the services performed in a particular method or manner. This is true even if the training was only given once at the beginning of the work relationship. The worker reported to work for set scheduled hours, punched a time clock, and personally provided her services at the firm's location. 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. While the worker's services were for a brief period of time, those services were continuous. 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. The firm had the investment in the facility, equipment, and supplies. The worker simply received an hourly rate of pay and had no other economic risk. 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.

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 to provide labor for the firm's operation. When doing so, the worker was not engaged in a separate business venture. 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.