

SS-8 Determination—Determination for Public Inspection

Occupation

Business/Computer Services/Office/Sales

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 indicated the firm is a freight management company. The worker provided services for the firm for tax years 2015 through 2018. The firm stated the worker performed outside sales for the firm, and helped to answer phones in the office. The worker indicated she performed services as an assistant/account manager. She provided a copy of the Office Manager duties, signed by her as an employee of the firm. The firm provided a copy of the W-9 signed by the worker, stating she was an independent contractor. The firm indicated she was allowed to utilize their office and equipment, as she did not have a computer of her own and since she was in the office, she also answered phone calls. The firm stated she made her own hours and came and went as she pleased for appointments etc. The firm stated her supervisor provided instruction, training and sales leads. The firm indicated work was performed on the firm premises. The worker was required to perform her services personally. The firm indicated she was paid by the hour. The customer paid the firm. Either party could terminate the work relationship without incurring a penalty or liability. The firm indicated the worker quit.

The worker indicated was given daily task assignments, most consisted of answering calls, responding to e-mails, filing, preparing supplies etc. The worker stated she made lead calls as well as dormant calls on accounts. She provided a list of the accounts she contacted. The worker indicated she performed services Monday through Friday eight-thirty to four-thirty, with a thirty minute lunch break. The worker agreed all work was performed on the firm premises. She was required to perform her services personally. The worker agreed all work was performed on firm premises. She agreed she was paid by the hour and the customer paid the firm. She indicated she was given paid vacations and paid Holidays (listed on the office manager duty page). Either party could terminate the work relationship without incurring a penalty or liability.

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 continuing relationship between the worker and the person or persons for whom the services are performed indicates that an employer-employee relationship exists. The term “full-time” may vary with the intent of the parties and the nature of the occupation since it does not necessarily mean working an eight hour day or a five or six day week. If the worker must devote substantially full-time to the business of the person or persons for whom the services are performed, such person or persons have control over the amount of time the worker spends working and, therefore, the worker is restricted from doing other gainful work. Payment by the hour, week, or month generally points to an employer-employee relationship. 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. Based on the information provided no evidence was provided to indicate the worker owned and operated her own business to provide the services rendered to the firm. All services were performed under the firm’s business name for the firm’s clients. The fact a flexible work schedule was allowed by the firm, does not make the worker an independent contractor. She was paid by the hour, used the firm’s office and equipment to perform the services, indicating no opportunity for profit or loss.