

SS-8 Determination—Determination for Public Inspection

Occupation 04MAN Association Manager	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 worker initiated the request for a determination of her work status as an association manager in tax years 2017 to 2018, for which she received Form 1099-MISC. The firm's business is described as a non-profit association serving local bowlers. She used the association's equipment, answered to the board, had a business card under their name, was on their website as an Association Manager, was under their control, and could not make decisions without board approval.

The firm's response was signed by the president of the board. The firm's business is to promote the sport of bowling for young and old. The firm is a non-profit group that collects membership dues, sanctions leagues, holds tournaments, and handles complaints made by bowlers. The worker provided services as an association manager. In this position she was responsible for keeping the records of the association, doing the bookkeeping, making the deposits, running the tournaments put on by the association, sanctioning leagues and bowlers, and reporting the finance status to the board. The worker signed a one year contract with the association for August 2017 to July 2018 then renewed for another year.

The worker stated she had a training book for the computer program and specific guidelines written by the [REDACTED] to follow. The job assignments came from the board and were defined by the [REDACTED]. The firm and [REDACTED] determined the methods by which the worker's services were performed. Any problems or complaints encountered by the worker were directed to the firm and/or U [REDACTED] for resolution. The worker was required to submit financial reports. Her routine consisted of entering memberships, making bank deposits, and processing awards. The worker's services were rendered at her home (80%) and bowling centers (20%). The worker was required to perform the services personally.

According to the firm, the outgoing Association Manager would provide the incoming Association Manager some training and the remainder is handled through online tutorials provided by the [REDACTED]. The job assignments/duties are outlined by the [REDACTED] and the worker determined how and when she carried out the job tasks. The worker's business was also hired to do some shirts for a tournament award. Any problems or complaints encountered by the worker were directed to the president of the association; and, the board and/or [REDACTED] was responsible for the resolution depending on the complaint or problem. There was no set schedule/hours for the services which were rendered 100% from the worker's home. The worker was not required to perform the services personally; any additional personnel were hired and paid by the worker.

The worker responded that the firm provided a computer, printer, paper, ink, postage, and envelopes. The worker incurred expenses for mileage, gas, Internet, and cell phone and she was not reimbursed. The worker did not lease equipment, space, or a facility. The worker was paid a salary; and, customers paid the firm. The worker was not covered under the firm's workers' compensation insurance policy. The worker indicated she was not at risk for a financial loss in this work relationship; the firm established level of payment for services provided or products sold.

The firm indicated the worker was provided a Laptop and a budget for paper and ink. The worker furnished a printer and file cabinet and any expenses beyond the allotted budget. The software was from the [REDACTED]. The expenses for gas/mileage, Internet, phone, and any other expenses were not reimbursed. It was unknown to the firm as to whether the worker did/did not lease equipment, space, or a facility. The worker was paid \$XX per quarter. The customers paid the firm. The worker was not covered under the firm's workers' compensation insurance policy. The worker's financial risk would be the loss or damage of her printer, materials and home office. The worker did not establish level of payment for services provided or products sold.

Both parties acknowledge there were no benefits extended to the worker and that either party could terminate the work relationship without incurring a liability or penalty. The firm indicated the worker was performing same or similar services for others during the same time frame; the worker disagreed. The worker stated she was referred to as an Association Manager for the [REDACTED]. The firm and worker concur that the worker quit.

The worker provided a copy of a cashflow statement of income and expenses, email communications from the [REDACTED]
[REDACTED]

Analysis

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.

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.

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. Also, workers are assumed to be employees if they are guaranteed a minimum salary or are given a drawing account of a specified amount that need not be repaid when it exceeds earnings.

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. Also, if the firm has the right to control the equipment, it is unlikely the worker had an investment in facilities.

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. The risk that a worker will not receive payment for his or her services, however, is common to both independent contractors and employees and, thus, does not constitute a sufficient economic risk to support treatment as an independent contractor. If a worker loses payment from the firm's customer for poor work, the firm shares the risk of such loss. Control of the firm over the worker would be necessary in order to reduce the risk of financial loss to the firm. The opportunity for higher earnings or of gain or loss from a commission arrangement is not considered profit or loss.

We have considered the information provided by both parties to this work relationship. 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 and business reputation and to ensure its customers' satisfaction and that its contractual obligations were met. The worker was not operating a separate and distinct business; 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. 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 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 the firm's business.

CONCLUSION

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 see www.irs.gov for more information including Publication 4341 Information Guide for Employers Filing Form 941 or Form 944 Frequently Asked Questions about the Reclassification of Workers as Employees and Publication 15 (Circular E) Employer's Tax Guide.