

SS-8 Determination—Determination for Public Inspection

Occupation

Managers/Supervisors/Administrators

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 worker submitted a request for determination in connection with services performed for the firm in 2025 as a property manager. Services performed included communication with tenants, rent collection, maintenance, inspections, and managing the firm's properties on a daily basis. The worker filed Form SS-8 as they believe they were misclassified. The worker believes they were an employee as they were required to follow a schedule determined by the firm. The worker was paid an hourly rate of pay and required to submit daily reports to the firm.

The firm's response states its business is a real estate brokerage and provides management services. The worker was engaged as a property management contractor. Services performed included leasing services, marketing properties, communication with prospective tenants, and coordinating showings. The worker was classified as an independent contractor as the worker operated independently, determined their own methods, and was not supervised or controlled by the firm. The firm states services were performed under an oral agreement between the parties that the worker would provide services independently with employment obligations or benefits. The firm provided the worker's signed Form W-9, Request for Taxpayer Identification Number and Certification, which documented their Social Security Number.

The firm states there was no formal training or instructions provided to the worker. The firm did not provide any formal work assignments to the worker. The worker self-sourced tenants. The worker determined their own methods by which assignments were performed. If problems or complaints arose, the worker was contacted and was primarily responsible for resolution. The firm did not require the worker to complete any reports. The firm did not require the worker to attend any meetings. Services were performed at various locations on an as-needed basis. The firm required the worker to personally perform services. The worker could hire substitutes or helpers; approval was not required by the firm. The worker was not responsible for paying any substitutes or helpers hired. The worker states they received training and instruction regarding the services to be performed. The worker received 90-days of training at the beginning of the work relationship. The firm provided work assignments and determined the methods by which those assignments were performed. If problems or complaints arose, the firm was contacted as well as responsible for resolution. Reports and meetings were required. Services were performed on a regularly scheduled basis.

The firm states they provided the worker with office space, to be used on a limited basis, and general administrative support. The worker provided their own personal vehicle, phone, computer and marketing tools. The worker did not lease space, equipment, or a facility. The worker incurred the job-related expense of transportation, and communication. The firm did not reimburse the worker for any expenses. Clients paid the firm. The worker received periodic payments based on the services performed. The worker could not request advance pay. The worker did take a financial risk and could suffer a financial loss performing services for the firm. The rate of pay was based on the services performed by the worker. The firm did not carry workers' compensation insurance on the worker. The worker states the firm provided a computer, accounts, email, and a printer. The worker provided a vehicle. The worker did not incur any job-related expenses in the performance of the services for the firm. The worker states the firm would at times reimburse the worker for fuel when required to drives to a far way location. The worker was paid a salary rate of pay. The firm set the rate of pay for the services provided.

The firm states there were no benefits made available to the worker. Either party could end the work relationship without penalty. The worker performed similar services for others during the term of the work relationship; approval from the firm was not required. The worker advertised their services on social media. There were no agreements prohibiting competition. The firm did not state whose name services were performed under. The firm did not state whether the worker was still performing services or if the work relationship had ended. The worker states they received the benefit of paid vacations and bonuses. The worker did not perform similar services for others. The worker did not advertise their services. Services were performed under the firm's business name. The firm ended the work relationship.

Analysis

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.

Section 31.3121(d)-1(a)(3) of the regulations provides that if the relationship of an employer and employee exists, the designation or description of the parties as anything other than that of employer and employee is immaterial. Thus, if an employer-employee relationship exists, any contractual designation of the employee as a partner, coadventurer, agent, or independent contractor must be disregarded.

Therefore, the firm's statement that the worker was an independent contractor pursuant to an oral 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. Furthermore, whether there is an employment relationship is a question of fact and not subject to negotiation between the parties.

If the services must be rendered personally, presumably the person or persons for whom the services are performed are interested in the methods used to accomplish the work as well as in the results. In this case, the firm required the worker to personally perform services. Furthermore, the services performed by the worker were integral to the firm's business operation. The firm provided work assignments by virtue of customers served and ultimately assumed responsibility for problem resolution. These facts evidence the firm retained the right to direct and control the worker to the extent necessary to ensure satisfactory job performance in a manner acceptable to the firm. Based on the worker's education, past work experience, and work ethic the firm may not have needed to frequently exercise its right to direct and control the worker; however, the facts evidence the firm retained the right to do so if needed.

The need to direct and control a worker and their services should not be confused with the right to direct and control. The worker provided their services on behalf of and under the firm's business name rather than an entity of their own. The firm was responsible for the quality of the work performed by the worker and for the satisfaction of their clients. This gave the firm the right to direct and control the worker and their services in order to protect their financial investment, their business reputation, and their relationship with their clients.

While the firm stated they provided the worker with freedom of action as to when they performed services, this in and of itself does not determine the worker's status as an independent contractor. The whole relationship needed to be analyzed to determine the worker's correct employment tax status. An important factor of determining a worker's status is who had the contractual relationship with the clients and whom did the clients pay. In this case, that relationship was between the firm and their customers.

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. In this case, the worker did not invest capital or assume business risks. 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. Based on the pay arrangement the worker could not realize a profit or incur a loss.

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 the firm's business. Both parties retained the right to terminate the work relationship at any time without penalty. There is no evidence to suggest the worker performed similar services for others as an independent contractor. The classification of a worker as an independent contractor should not be based primarily on the fact that a worker's services may be used on a temporary, part-time, or as-needed basis. As noted above, common law factors are considered when examining the worker classification issue.

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.

The firm can obtain additional information related to worker classification online at www.irs.gov; Publication 4341.