

SS-8 Determination—Determination for Public Inspection

Occupation 04OPC Other Persons in Charge	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 requested a determination of employment status for services performed for the firm in 2016 and 2017 as an inn keeper. The firm owns a bed and breakfast and responded to our request for information as follows:

The firm stated it operates a 14 room bed and breakfast. The worker was engaged as an inn keeper. The worker entered into a written agreement with the firm. The worker used her management experience to determine her daily assignments. She determined her own methods. The worker handled any issues that would arise. The worker personally performed her services at the firm's bed and breakfast location. She controlled her own schedule as the firm owner was located 4 hours away from the inn. The firm provided minimal office and kitchen supplies. The worker used most of her own kitchen supplies and equipment. The firm paid for the ingredients used for breakfast and desserts. The worker was paid a salary. Customers paid the firm. The worker received no benefits. Either party could have terminated without liability.

The firm hired the worker through an on-line service that posts positions for inn keepers. The worker was aware that she was engaged as an independent contractor. The firm gave the worker full authority to perform her services in the manner that she desired. The firm contracted with the worker to obtain the end result of guests leaving the firm's bed and breakfast with a memorable getaway and wanting to come again. As the owner was located far away, he believes he did not have the ability to direct and control how the worker did her work. She was not given any instruction on how to do the job or what specific tools to use. The only specific training was on how to use the computer system. The worker was encouraged to learn the unique characteristics of the unique rooms at the bed and breakfast. The worker was not required to attend any meetings. The firm established baseline prices for the rooms. The worker had the ability to up or down sell these rates and create packages if she desired. The worker was not prohibited from working for others. The firm stated he believed the worker was in business marketing her baked goods.

The firm sent in a position summary of the inn keeper. This position summary listed the primary duties of the position in detail and the annual salary with lodging included.

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.

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. Therefore, a 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.

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. 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. The worker was engaged to manage the inn for the firm. She was experienced and did not need to be supervised. The position summary spelled out the details of her position. The firm maintained the right, even if it did not exercise that right, to direct and control the worker in the performance of her services.

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.

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. 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. The worker had no investment and no risk of loss. The worker performed her services as a representative of the firm for the firm's customers.

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.

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.

Firm: For further information please go to www.irs.gov Publication 4341