

SS-8 Determination—Determination for Public Inspection

Occupation

05CCP Child Care Providers

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 providing daycare services. The worker was engaged to provide child care. She received a 2016 Form 1099-MISC for her services. There was no written agreement.

Both the firm and the worker agreed that the firm gave the worker instructions on how to care for the children and the schedule to follow. The worker received her work daily assignments verbally. The worker noted that the firm determined the methods by which the assignments were performed; both parties agreed that the firm would be contacted if any issues or problems arose. Only verbal reports were needed. The worker's schedule was based on need, and was dependent on the number of children. Her work routine varied from five to eight hours a day, at the firm's business location. The firm noted that she chose her own work schedule. Both parties agreed that there were no meetings. Both also agreed that the worker was required to provide the services personally.

Both the firm and the worker agreed that the firm provided all supplies and materials. Both also agreed that the worker was paid an hourly rate and had no other economic risk. The customer paid the firm; the firm established the level of payment for services.

There were no benefits. Either party could terminate the relationship without incurring a liability. The worker did not perform similar services for others. According to the firm, she worked under the firm's business name. 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 obtained the children for its daycare operations and engaged the worker to provide her services on its premises. The firm told her what to do, and when she was needed. While her work schedule may have varied, if the nature of the occupation makes fixed hours impractical, a requirement that workers be on the job at certain times is an element of control. It is unreasonable to assume that the worker could come and go as she pleased when caring for children. In addition, the worker performed her child care services at the firm's location, also another element of control. Control over the place of work is indicated when the person or persons for whom the services are performed have the right to compel the worker to travel a designated route, to canvass a territory within a certain time, or to work at specific places as required. The worker's services were for a short temporary period of time, but 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 daycare operation and provided the worker with everything needed. She 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 daycare operation. When doing so, the worker was not engaged in an 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.