

SS-8 Determination—Determination for Public Inspection

Occupation

Personal Service 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 worker submitted a Form SS-8 for services performed for the firm as a Day Care Teacher from January 2024 until October 2025. The worker filed a Form SS-8 because they believe that they erroneously received a 1099-NEC from the firm.

The worker states that they were an employee of the firm because they had had a set work schedule that required them to punch in and out and they were paid by the hour. There were no written or oral agreements between the parties.

The firm states that they are a Early Learning and Child Care Services business. The firm hired the worker as a independent contractor. The firm classified the worker as an independent contractor because the worker was able to pick up shifts at their own availability, had no specific schedule or training by the firm. There were no written agreements between the parties. The oral agreement between the parties was that the worker would fill in for teachers on an as needed basis and work only when shifts were offered.

The firm states that the worker was not given any training. The firms owner gave the worker job assignments in person. The firms supervisor determined the methods by which job duties were completed. If the worker encountered any problems or complaints while working, they were required to contact the firms supervisor. The firms supervisor would be responsible for problem resolution. The firm did not require the worker to complete any reports. The worker completed child care tasks as available 100% at the firm's premises. The firm did not require the worker to attend meetings. The firm did not require the worker to provide services personally. The worker could not hire helpers or substitutes.

The worker states that they were given instructions on how to feed the kids in the morning and to pack their belongings for pick up by the parents. The firm owner gave the worker job assignments in person and determined the methods by which job duties were performed. If any problems or complaints arise, the firm owner was to be contacted. The firm owner was responsible for the resolution. There were no reports required of the worker. The worker performed childcare duties as scheduled, 5 days a week, 7:30am to 4:30pm, 100% of the time at the firm's premises. The worker was not required to attend meetings. The firm required the worker to personally perform services. The worker had no hiring authority.

The firm states that they didn't provide anything while the worker provided office supplies and any additional materials needed. The worker did not provide or lease any space or equipment. The worker did not incur any job-related expenses. The firm paid the worker an hourly wage. The firm did not give the worker access to advance pay. Customers paid the firm. The firm did not carry worker's compensation insurance on the worker. The worker did not take a financial risk or suffer a financial loss while working for the firm. The firm set the rate of pay for services performed. The worker states that the firm provided all food, diapers and daycare supplies. The firm paid the worker an hourly wage. Customers paid the firm. The worker had no exposure to financial risk or loss. The firm set the rate of pay for services performed.

The firm states that they did not provide benefits to the worker. The firm or worker could both end the work relationship without incurring penalty. The worker did perform similar services for other firms. There were no non-compete agreements in place between the parties. The worker did not advertise to the public. The worker did not assemble or process products at home. The firm did not introduce the worker to its customers. The firm ended the work relationship.

The worker states that the firm did not provide benefits to them. The firm or worker could not end the work relationship without incurring penalty because if the worker forgot to do something, they would be penalized with 2 days of work day. The worker did not perform similar services for other firms. There were no non-compete agreements in place between the parties. The worker did not advertise to the public. The worker did not assemble or process products at home. The firm did not introduce the worker to its customers. Services were performed under the firms 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, co-adventurer, agent, or independent contractor must be disregarded.

Therefore, a statement that a worker is an independent contractor pursuant to a written or verbal 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.

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. In this case, the worker was instructed on general expectations and how the finished products should be completed.

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.

The right to discharge a worker is a factor indicating that the worker is an employee and the person possessing the right is an employer. If the worker has the right to end his or her relationship with the person for whom the services are performed at any time he or she wishes without incurring liability, that factor indicates an employer-employee relationship. An independent contractor, on the other hand, cannot be fired so long as the independent contractor produces a result that meets the contract specifications. In this case, the firm or worker could end the work relationship without incurring penalty.

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. Factors that illustrate how the parties perceive their relationship include the intent of the parties as expressed in oral 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.

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.