

SS-8 Determination—Determination for Public Inspection

Occupation

PCP - Personal Care Providers (examples: beauticians, body piercers)

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 Direct Support Professional from April 2024 until December 2024. 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 reported to a regular schedule of duties. There were no written or oral agreements between the parties.

The firm states that they are an adult residential facility serving developmentally disabled adult business. The firm hired the worker as a co-administrator caregiver that assisted disabled adults with activities of daily living. The firm classified the worker as an employee because they reported daily to perform scheduled duties but provided a 1099NEC instead of a W2. There were no written or oral agreements between the parties.

The firm states that the worker was shown how to report daily to perform scheduled duties. It is unknown who gave the worker job assignments in person. The worker 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 firm owner. The firm owner would be responsible for problem resolution. The firm did not require the worker to complete any reports. The worker completed caregiver tasks as scheduled 100% at the firm's premises. The firm did require the worker to attend staff meetings and would not be penalized if not in attendance. The firm did not require the worker to provide services personally. The worker could not hire helpers or substitutes.

The worker states that they received training on job functions and CPR/First-Aid certification. The worker gave themselves job assignments in person and determined the methods by which job duties were performed. If any problems or complaints were to arise, the firm's administrator was to be contacted. The firm's administrator was responsible for the resolution. There were no reports required of the worker. Duties were performed as scheduled 100% of the time at the firm's premises. The worker was not required to attend meetings. The firm did not require the worker to personally perform services. The worker had no hiring authority.

The firm states that they provided the office space while the worker provided nothing. The worker did not lease any space or equipment. The worker did not incur any job-related expenses. The firm paid the worker an hourly pay and commission does not apply. 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 supplies and equipment does not apply to the firm or worker. The worker did not lease any space or equipment and did not incur any job-related expenses. The firm paid the worker an hourly rate of pay. Customers paid the firm. The worker had no exposure to financial risk or loss.

The firm states that they did provide benefits to the worker such as personal days and paid holidays. The firm or worker could end the work relationship without incurring penalty. 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 their services to the public. The worker did not assemble or process products at home. The firm did not introduce the worker to its customers. The worker still performs services for the firm.

The worker states that there were no benefits provided to them by the firm. The firm did not introduce the worker to its customers. The worker still performs services for the firm.

Analysis

The question of whether an individual is an independent contractor or an employee is one that is determined through consideration of the facts of a particular case along with the application of law and regulations for worker classification issues, known as “common law.”

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.

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. We must examine the relationship of the worker and the business. We consider 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. The degree of importance of each factor varies depending on the occupation and the context in which the services are performed. 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 work is performed on the premises of the person or persons for whom the services are performed, that factor suggests control over the worker, especially if the work could be done elsewhere. Work done off the premises of the person or persons receiving the services, such as at the office of the worker, indicates some freedom from control. However, this fact by itself does not mean that the worker is not an employee. The importance of this factor depends on the nature of the service involved and the extent to which an employer generally would require that employees perform such services on the employer’s premises. 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.

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.

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.

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 incurring a liability. There is no evidence to suggest the worker performed similar services for others as an independent contractor or advertised business services to the general public during the term of this work relationship. 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.