

SS-8 Determination—Determination for Public Inspection

Occupation

05FIW Food Industry Workers

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 operating a coffee shop and bistro. The firm engaged the worker to perform cleaning services at the firm's place of business. The firm allowed the worker to perform the services after hours determined by the worker. The firm provided the worker with instructions on what jobs needed to be done and how to perform the services. The services remained the same day to day. The firm determined the methods used to perform the services. The worker was required to contact the firm with regard to problems or complaints needed to be resolved. The worker performed the services personally. Not applicable was indicated to hiring and paying substitutes or helpers.

The firm provided the equipment, materials, and supplies needed by the worker to perform the services. The worker did not provide anything or lease anything. The worker did not incur any business expenses. The firm paid the worker a set amount per day and the customers paid the firm for products and services. The worker did not determine the level of payment for services. The worker could not suffer any economic loss and had no financial risk.

There were not contracts between the firm and worker. The firm indicated the worker did perform similar services for others and was not required to obtain the firm's prior approval to do so. The worker stated no similar services were performed for others while performing services for the firm. Both the firm and worker indicated not applicable to worker advertising as a business to the public. Both parties agreed the working relationship could be terminated by either party at any time without incurring any liability. The relationship ended when the worker quit.

Analysis

When a firm determines what, how, when, and where workers perform services an employer/employee relationship exists. For federal employment tax purposes, it is not necessary for firms to exert direct or continuous control nor that services be performed full-time on a fixed scheduled basis, it is sufficient that the firm retains the right to change the workers services, as they deem necessary for business purposes. This control may come from verbal instructions, training, meetings, reporting, as well as supervision. Also, the methods used by workers to perform services are not only controlled through verbal instructions but also by equipment, materials, and supplies provided. In this case, the firm not the worker had control over the methods and means used in the performance of the services. These facts evidence behavioral control by the firm over the services performed by the worker.

When a worker does not have a significant financial investment in a business requiring capital outlays with business risk an employer/employee relationship is evident. In this case, the worker had no financial investment in a business and did not incur any business expenses. The firm had the business investment and control over profit and risk of loss with regard to the services the worker performed for the firm's business. The firm provided everything needed by the worker to perform the services. The firm paid the worker a set amount per day for performing the services and the customers paid the firm for the products and services. The firm determined the level of payment for the services and products sold. The firm had control over profits made or losses incurred with regard to the costs associated with the operation of the business. These facts evidence financial control by the firm over the services performed by the worker.

There were no contracts between the firm and worker. A verbal working relationship was entered into. The firm indicated the worker did perform similar services for others and was not required to obtain the firm's prior approval. The worker indicated no similar services were performed for others while performing services for the firm. Although the issue of a worker performing similar services for others could be an important factor to consider in an independent contractor relationship, this factor alone would not make the worker to be an independent contractor. Many workers have more than one job at a time and may be an employee in one or all working relationships depending on the autonomy of each one. The worker personally performed services for the firm's business after hours on a regular and continuous part-time basis over several months.

Both the firm and the worker retained the right to terminate the working relationship at any time without incurring any liability. The right to discharge a worker at any time without incurring a liability for termination is a factor indicating that the worker is an employee and the person possessing the right is an employer. An employer exercises control through the threat of dismissal, which causes the worker to obey the employer's instructions. An independent contractor, on the other hand, cannot be fired without a liability so long as the independent contractor produces a result that meets the contract specifications. Likewise, 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.