

SS-8 Determination—Determination for Public Inspection

Occupation Personal Service Providers	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

Information provided indicated the firm is a full service restaurant. The worker performed services as the head chef and kitchen manager for tax years 2016 and 2017. The firm reported the income earned on Form 1099-MISC. The firm indicated no training was given. The owner of the restaurant determined how assignments were performed. The daily routine varied, he was responsible for control of the kitchen, and creating new items etc. Work was performed at the firm premises, as well as from his home. He was required to attend action meetings, no penalties for not attending. He was required to perform services personally. He did have permission to hire staff as kitchen manager, the firm paid all workers. The firm provided all major appliance. He provided his own tools and uniforms. He was paid by the hour, as well as tips from the customers. The customer paid the firm. Either party could terminate the work relationship without incurring a penalty or liability. He was represented as the head chef of the restaurant.

The worker indicated he had a set work schedule from week to week. All business aspects are controlled by the firm. Instructions change daily as determined necessary. He is given a daily prep list or verbal instructions from the firm. He worked ten am to two pm and four-thirty pm to ten pm typically working five to six days a week. All services are performed on the firm premises. Meetings attended when called. He was required to perform services personally. The worker agreed the firm provided all supplies, equipment and materials. He was paid by the hour, and the customer paid the firm. Either party could terminate the work relationship without incurring a penalty or liability. He was represented as an employee of the firm. He agreed he quit.

Analysis

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.

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.

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.

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.

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 your business. Both parties retained the right to terminate the work relationship at any time without incurring a liability.

CONCLUSION

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 services performed were a necessary and integral part of the firm's business. The success and reputation of a restaurant is dependent (primarily) on the chef. All work was performed on firm premises, utilizing the firm's equipment and supplies. He was paid by the hour, plus tips, indicating no opportunity for profit or loss.