

SS-8 Determination—Determination for Public Inspection

Occupation

05FIW.5 Food Industry Worker

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

It is our usual practice in cases of this type to solicit information from both parties involved. Upon the submission of the Form SS-8 from the worker, we requested information from the firm concerning this work relationship. [REDACTED], owner of the firm, responded to our request for completion of Form SS-8.

From the information provided the firm is a small family owned restaurant and the worker was engaged by the firm as a cook. The worker was required to personally perform her services at the firm's premises 4 days per week – 6 a.m. to 4 p.m. The firm states they provided basic instructions to the worker on how to perform her job. The worker received her assignments from the firm and the firm determined how the worker performed her services. The worker was required to notify the firm if any problems or complaints arose for their resolution. The worker was not required to submit reports or attend meetings.

The firm provided all cooking utensils, food, and appliances to the worker in order to perform her services. The worker did not incur expenses, she was paid at an hourly rate, and she did not have an opportunity to incur a loss as a result of her services. The firm reported the worker's earnings on Forms 1099-MISC. The firm did not carry workers' compensation insurance on the worker. The firm determined the worker's rate of pay.

The worker was not eligible for employee benefits. The worker did not perform similar services for others, she did not advertise her services, and the firm states they represented the worker as an employee to their clients. Either party could terminate the work relationship at any time without either party incurring a liability.

Analysis

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, the firm provided basic instructions to the worker on how to perform her job. The firm provided the worker with her assignments and they determined how those assignments were completed. The worker performed her services under the firm's business name rather than an entity of her own. The firm was responsible for the quality of the work performed by the worker and for the satisfaction of their clients. This gave the firm the right to direct and control the worker and his services in order to protect their financial investment, their business reputation, and their relationship with their clients.

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 the firm's 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.