

SS-8 Determination—Determination for Public Inspection

Occupation 05FIW.11 Food Industry Worker	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

The firm is in the business of livestock sales. The worker was engaged by the firm to run its cafe for breakfasts and lunches. The firm reported the worker's remuneration on Form 1099-MISC for 2013.

Information from the parties supports that the firm relied upon the worker's prior experience and training to perform her services. The worker was in charge of cooking and serving meals. She determined the methods by which she performed her services. If problems or complaints occurred, the worker contacted the firm for resolution. The worker followed a routine schedule. She provided her services on the firm's premises. The worker was required to perform her services personally. If additional personnel were needed, the firm was responsible for hiring and compensating them.

The firm provided the supplies, equipment, materials, and the property. The worker did not lease space or equipment, or incur expenses in the performance of her services. The firm paid the worker at an hourly rate. Customers paid the firm directly at prices established by the firm. The firm did not cover the worker under workers' compensation. Neither party indicated an investment by the worker in the firm or a related business, or the risk of the worker incurring a financial loss beyond the normal loss of compensation.

The firm did not make benefits available to the worker. Both parties reserved the right to terminate the work relationship at any time without incurring a penalty or liability. The worker did not advertise her services or provide similar services for others during the same time period.

Analysis

Factors that illustrate whether there was a right to control how a worker performed a task include training and instructions. In this case, while the firm relied upon the worker's prior training and experience to perform her services, the firm was responsible for resolving any problems or complaints, showing that it retained the right to change the worker's methods and to direct the worker to the extent necessary to protect its financial investment. The worker followed the schedule set by the firm and performed her services on the firm's premises. 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. The worker was required to perform her services personally, meaning she could not engage and pay others to perform services for the firm on her behalf. If the services must be rendered personally, presumably the person or persons for whom the services are performed are interested in the methods used to accomplish the work as well as in the results. These facts show that the firm retained behavioral control over the services of the worker.

Factors that illustrate whether there was 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. "Profit or loss" implies the use of capital by a person in an independent business of his or her own. Lack of significant investment by a person in facilities or equipment used in performing services for another indicates dependence on the employer and, accordingly, the existence of an employer-employee relationship. The firm paid the worker at an hourly rate. Payment by the hour generally points to an employer-employee relationship. These facts show that the firm retained control over the financial aspects of the worker's services.

Factors that illustrate how the parties perceived 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 were part of the service recipient's regular business activities. In this case, the worker performed her services under the firm's name. She 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. Integration of the worker's services into the business operations generally shows that the worker is subject to direction and control. When the success or continuation of a business depends to an appreciable degree upon the performance of certain services, the workers who perform those services must necessarily be subject to a certain amount of control by the owner of the business. Although the firm did not provide benefits to the worker, both parties retained the right to terminate the work relationship without incurring a liability, a factor indicating an employer-employee relationship. These facts show that the firm retained control over the work relationship and services of the worker.

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.