

SS-8 Determination—Determination for Public Inspection

Occupation

05ITE Instructors/Teachers

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 in the business of providing various education programs. The worker was engaged to help with science, technology engineering, arts, and math projects as assigned by the firm. She received a 2017 Form 1099-MISC for her services. There was no written agreement but the firm indicated that there was an invoice, resume, W-9 and Form 1099. No invoice or resume was provided.

The worker was trained on how to grade assignments, what materials to use for teaching and received lesson plans/guides on how to teach. She received her work assignments online from her supervisor. The firm indicated that the worker was given leadership training for high school students. Both parties agreed that the firm's supervisors/teachers determined the methods by which the assignments were performed and would be contacted if any issue or problems arose. The firm indicated that the worker was to submit an spreadsheet; the worker noted that she would analyze graded assignments. The worker reported to the classroom weekdays for set scheduled hours at the firm's premises. Both agreed that there were required meetings to attend. Only the worker indicated that she was to provide the services personally with only the firm's supervisors hiring and paying any substitute workers.

Both the firm and the worker agreed that the firm provided all supplies and materials for the projects/program. The firm noted that the worker provided a computer, phone and car. The worker noted that she was paid an hourly rate and had no other economic risk; however, the firm noted that she was paid per day. There was disagreement on who the customer paid as the firm noted that the worker was paid. Each party indicated that the other established the level of payment for services.

Both the firm and the worker agreed that there were no benefits with the worker noting that it was a seasonal job. Only the worker noted that either party could terminate the relationship without incurring a liability. The worker did not perform similar services for others. According to the firm, the worker was represented as the firm's student leader. The relationship ended when the seasonal project ended.

Analysis

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. The relationship of the worker and the business must be examined. 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 should be considered. 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.

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 retained the right to change the worker's methods and to direct the worker to the extent necessary to protect its financial investment. The firm provided the educational program and presumably, obtained the elementary students for program participation. The worker was engaged to assist in the various projects undertaken. The firm provided the worker with initial leadership training. Training a worker by requiring an experienced employee to work with the worker, by corresponding with the worker, by requiring the worker to attend meetings, or by using other methods, indicates that the person or persons for whom the services are performed want the services performed in a particular method or manner. This is true even if the training was only given once at the beginning of the work relationship. The worker provided her services according to the firm's scheduled hours and days. The establishment of set hours of work by the person or persons for whom the services are performed is a factor indicating control. If the nature of the occupation makes fixed hours impractical, a requirement that workers be on the job at certain times is an element of control. In addition, the fact that the worker worked at the firm's premises also suggests control over the worker. While the work relationship was for a short duration, the worker's services were continuous during the time period in question. A continuing relationship between the worker and the person or persons for whom the services are performed indicates that an employer-employee relationship exists. A continuing relationship may exist where work is performed in frequently recurring although irregular intervals.

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. A person who can realize a profit or suffer a loss as a result of his or her services is generally an independent contractor, while the person who cannot is an employee. "Profit or loss" implies the use of capital by a person in an independent business of his or her own. It was the firm that had the investment. The items provided by the worker such as a car, computer, and phone are common to most workers, whether employees or self-employed. There was disagreement between the parties on whether the worker was paid by the hour or a lump sum but in either scenario, the worker had no other economic risk other than loss of that compensation.

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. There were no benefits and there was no written agreement. The worker was engaged as a educational assistant for the firm's educational programs. When doing so, the worker was not engaged in an separate business venture. 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.

Based on the above analysis, we conclude that the firm had the right to exercise direction and control over the worker for the entire work relationship to the degree necessary to establish that the worker was a common law employee and not an independent contractor operating a trade or business.

Please see Publication 4341 for guidance and instructions for firm compliance.