

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

Information provided indicated the firm is a religious organization. The worker had been retained by the firm for tax years 2015, 2016, 2017 as a Choir Director. The firm reported the income on Form 1099-MISC, as they felt they did not control many of the aspects, including selection of musical arrangements. The firm provided copies of the agreements between church and worker, that states she was 'engaged and employed' as the Choir Director. It indicates the monthly amount to be paid and to include housing. It indicated the worker was to be available for all church services, special requests such as funerals, baptisms, weddings, other services pertaining to that faith, choir rehearsals or whenever needed by the Reverend. The firm also provided a copy of the termination letter provided to the worker.

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. The worker was required to be available to the firm at all times. The services had been performed on a continuing basis for the firm for three years.

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 agreement between the parties was an employment agreement, not an independent contract agreement. The firm had priority over the worker's time, she was required to be available at all times, during weekend services, and any and all church services provided to their congregation. The worker was provided housing and a set monthly stipend for her services. The firm terminated the workers services indicating an employer/employee work relationship.