

SS-8 Determination—Determination for Public Inspection

Occupation

09PRW Interpreter

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 worker initiated the request for a determination of her work status as an interpreter in tax year 2018, for which she received Form 1099-MISC. The firm's business is described as supplying interpretation/interpreter services.

The firm's response was signed by the owner. The firm's business is interpreting and the worker provided services as an interpreter. The firm indicates there are 150 people performing same/similar services.

The worker stated she was provided training and instructions via interpretation training videos. She received her job assignments via email, phone, or text message. The firm determined the methods by which the worker's services were performed; any problems or complaints encountered by the worker were directed to the firm for resolution. The worker was required to report when arriving to or departing from the assigned job, and whether there were other appointments scheduled. The services were rendered at a doctor's office and 100% of her time was spent at the assigned location. The worker was required to perform the services personally, with any additional personnel being hired and paid by the firm.

The firm responded that an email is sent when the worker begins which states the firm's expectations. The job assignments are conveyed via text or emails. Any problems or complaints encountered by the worker were directed to the firm for resolution. There is no obligation to accept a job; there is a one to two hour window to accept or decline the job. The worker sends a text confirming arrival and departure times depending on whether the assignment is from home or at a doctor's office. The worker was required to perform the services personally; any additional personnel were hired and paid by the firm.

The worker indicated the firm provided nothing; the worker furnished a vehicle and gas. The worker stated the firm reimbursed for gas mileage. The worker was paid an hourly wage and the customers paid the firm. The worker indicated she was not covered under the firm's workers' compensation insurance policy. She felt she was at risk for a financial loss in this work relationship for loss/damage of her vehicle.

According to the firm, the firm provided nothing to the worker; and, the worker furnished a vehicle and phone. The worker incurs the expense for her vehicle and depending upon the assignment, appropriate attire; the worker was not reimbursed. The worker's compensation was based on each assignment. The customers paid the firm. The worker was not covered under the firm's workers' compensation insurance policy. The worker did not establish level of payment for services provided; it was based on contract prices that are established.

The firm and worker agree there were no benefits extended to the worker and that either party could terminate the work relationship without incurring a liability or penalty. The worker acknowledged she was not performing same or similar services for others during the same time frame.

The firm provided a copy of the email sent to the worker in which the worker was asked to send a resume, was thanked for accepting a job for the next day, and with the firm requesting completion of Form W-9 and a copy of worker's driver's license. The firm provided general information: that this is an Independent Contractor position; the clients are men and women who have suffered an accident at work therefore most assignments take place in a doctor's office, PT facilities, and/or hospitals; the interpreter must be highly skilled and fully bi-lingual or certified; the interpreter should be available for job-related communication by email or text messages to receive, confirm and invoice assignments; a link to videos provided on the firm's website to better understand the job and are part of the training.

Analysis

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. This control factor is present if the person or persons for whom the services are performed have the right to require compliance with instructions. Some employees may work without receiving instructions because they are highly proficient and conscientious workers or because the duties are so simple or familiar to them. Furthermore, the instructions, that show how to reach the desired results, may have been oral and given only once at the beginning of the relationship.

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.

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.

Payment by the hour, week, or month generally points to an employer-employee relationship, provided that this method of payment is not just a convenient way of paying a lump sum agreed upon as the cost of a job. In such instances, the firm assumes the hazard that the services of the worker will be proportionate to the regular payments. This action warrants the assumption that, to protect its investment, the firm has the right to direct and control the performance of the workers. Also, workers are assumed to be employees if they are guaranteed a minimum salary or are given a drawing account of a specified amount that need not be repaid when it exceeds earnings.

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.

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. The risk that a worker will not receive payment for his or her services, however, is common to both independent contractors and employees and, thus, does not constitute a sufficient economic risk to support treatment as an independent contractor. If a worker loses payment from the firm's customer for poor work, the firm shares the risk of such loss. Control of the firm over the worker would be necessary in order to reduce the risk of financial loss to the firm. The opportunity for higher earnings or of gain or loss from a commission arrangement is not considered profit or loss.

We have considered the information provided by both parties to this work relationship. 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 and business reputation and to ensure its customers' satisfaction and that its contractual obligations were met. The worker was not operating a separate and distinct business; 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. 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. 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.

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.