

SS-8 Determination—Determination for Public Inspection

Occupation

05PCP Personal Service Providers

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 a hair and beauty products manufacturer, designer, and marketing business. The firm engaged the worker under a 90 day agreement to perform public relations and marketing services for the firm's business operation. The firm provided the worker with verbal job instructions and expectations with regard to performance of services for the firm's business. The firm allowed the worker to perform the services on a flexible variable schedule at the firm's place of business, home, or other locations. The firm required the worker to contact the firm regarding any problems or complaints for resolution. The firm required the worker to provide the firm with job reports and invoices for the payment for services. The firm required the worker to perform the services personally.

The firm provided an office, office equipment, materials, and supplies. The firm required the worker to discuss and receive written approval prior to charging any expenses. The worker did not lease anything. The worker did not incur any significant on-going business expenses. The firm paid the worker a set amount per month and the customers paid the firm for products. The firm did not carry workers' compensation insurance. The firm determined the level of payment for products and services. The worker could not suffer any economic loss and had no financial risk with regard to performance of the services.

There was a 90 day written agreement entered into between the firm and the worker. The agreement referred to the worker as an agent of the firm's business and addressed jobs, payment for services, expenses, submission of reports, non disclosure and termination issues. The firm and worker were required to provide a written 30 day notice to terminate the working relationship. There was no liability for termination indicated. The worker did not perform similar services for others while performing services for the firm. The worker did no advertising as a business to the public. The firm terminated the working relationship without incurring any liability prior to the end of the 90 day period.

Analysis

When a firm determines or retains the right to determine directly or through designation what, how, when, and where workers perform services an employer/employee relationship exists. For federal employment tax purposes, it is not necessary for firms to exert direct or continuous control nor that services be performed full-time on a fixed scheduled basis, it is sufficient that the firm retains the right to change the workers services, as they deem necessary for business purposes. This control may come from verbal instructions, training, meetings, reporting, as well as supervision. Also, the methods used by workers to perform services are not only controlled through verbal instructions but also by equipment, materials, and supplies provided. In this case, the firm not the worker had control over the methods and means used in the performance of the services. These facts evidence behavioral control by the firm over the services performed by the worker.

When a worker does not have a significant financial investment in a business requiring capital outlays with business risk an employer/employee relationship is evident. In this case, the worker had no financial investment in a business and did not incur any business expenses. The firm had the business investment and control over profit and risk of loss with regard to the services the worker performed for the firm's business. The firm discussed and approved expenses charged by the worker. The firm determined the level of payment the customers paid for the products and the payment for services performed by the worker. The worker could not suffer any economic loss and had no financial risk with regard to the services performed for the firm's business operation. These facts evidence financial control by the firm over the services performed by the worker.

There was a signed working relationship agreement entered into for 90 days indicating the worker to be an agent of the firm's business. The agreement addressed the job, payment, reporting requirements, termination requirement, and confidentiality issues. The worker did not perform similar services for others while performing services for the firm. The worker did not advertise as a business to the public. The worker performed services for the firm's business under the firm's business name. The firm terminated the working relationship without incurring any liability prior to the 90 day agreement ending. The right to discharge a worker at any time without incurring a liability for termination is a factor indicating that the worker is an employee and the person possessing the right is an employer. An employer exercises control through the threat of dismissal, which causes the worker to obey the employer's instructions. An independent contractor, on the other hand, cannot be fired without a liability so long as the independent contractor produces a result that meets the contract specifications. Likewise, if the worker has the right to end his or her relationship with the person for whom the services are performed at any time he or she wishes without incurring liability, that factor indicates an employer-employee relationship.

We have determined that the worker was an employee under common law.