

SS-8 Determination—Determination for Public Inspection

Occupation 05PHC	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 worker requested a determination of employment status for services performed for the firm in 2017 and 2018 as a pet caregiver. The firm is in the business of pet care and responded to our request for information as follows:

The firm is in the business of providing pet care services. The worker was engaged as a pet care specialist. The worker fulfilled orders in clients' homes including dog walking, cat sitting, clean up medicine administration, and client report card. The firm feels the worker was correctly treated as an independent contractor because the firm does not train the worker, the firm does not monitor the worker's schedule or methods, The worker is not required to have meetings or send reports and the worker had to have his own equipment. The worker signed a contract with the firm. The worker was not trained by the firm. The worker had to follow the firm's safety guidelines. The worker found specific instructions on his work orders. The worker received his assignments through a special phone application. The worker determined his methods. The worker submitted reports to the clients. The worker decided what jobs to take. The worker personally performed his services at the firm's customer locations. The firm provided the waste bags, application access, and client keys. The worker used his own phone and bike. The worker was paid per work order. Customers paid the firm. Either party could terminate without liability. The worker quit. The firm further stated that the worker was not given any training. The worker was already skilled. The worker was able to design his own schedule, he was not required to submit reports or attend meetings. He had the ability to work for multiple firms.

The firm included the independent contractor agreement with the worker that stated that the worker was an independent contractor that will receive a 1099 MISC at years end. The worker was required to submit an invoice weekly for work orders completed that week. The worker was to be paid biweekly. The worker was responsible for his own travel costs. Worker was not allowed to work any job that would conflict with the company. The firm also sent in sample work lists and payment rates the worker was paid for various services.

Analysis

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. Therefore, a statement that the worker was an independent contractor pursuant to an agreement is without merit. For federal employment tax purposes, it is the actual working relationship that is controlling and not the terms of the contract (oral or written) between the parties.

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 business. 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. The worker received his assignments from the firm. The worker was given flexibility in his schedule but the worker was required to follow the guidance of the firm. The firm maintained the right to exercise control over the worker, whether or not they exercised that right.

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. The worker performed his services as a representative of the firm and not operating his own business.

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. 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 term "significant investment" does not include tools, instruments, and clothing commonly provided by employees in their trade; nor does it include education, experience, or training.

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. The worker had no investment in the firm's business, received fees for services provided that were set by the firm, and could not suffer a loss.

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.

Firm: For further information please go to www.irs.gov Publication 4341