
SS-8 Determination—Determination for Public Inspection

Occupation PRW - Public Relations Workers (examples: customer service representati	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 submitted a Form SS-8 for services performed for the firm as a Public Policy Advocacy Coordinator from July 2023 until April 2025. The worker filed a Form SS-8 because they believe that they erroneously received a 1099-NEC from the firm.

The worker states that they were an employee of the firm because the firm set their work priorities and required participation in management meetings. There were no oral or written agreements between the parties.

The firm states that they are a Non-profit community development business. The firm classified the worker as an independent contractor because the worker had the means and methods of how their work was achieved. The firm only had the right to control the result of the work. The worker did provide services for the firm between 2020 and 2021 as W2 employee. There were no oral agreements between the parties. The written agreement between the parties was that the worker provide services as available, set their own hours, provide their own tools and equipment and be paid a contractor rate per hour without receiving benefits.

The firm states that the worker was not provided any training or instructions. The firm gave supervised job assignments in person, by phone, through email and text messages. The worker determines the methods by which job duties were completed. If the worker encountered any problems or complaints while working, they were required to contact the firm. The worker would be responsible for problem resolution. The firm did not require the worker to complete any reports. The worker completed tasks as available 100% remotely. The firm did require the worker to attend community meetings but would not be penalized if not in attendance. The firm did not require the worker to provide services personally. The worker could hire helpers or substitutes with required approval from the firm.

The worker states that the firm provided training on internal reporting standards and community engagement methods. Job assignments were assigned by phone, virtual meetings and through email. The firm determined the methods by which job duties were performed. If any problems or complaints arise, the firm was to be contacted. The firm was responsible for the resolution. There were reports required of the worker. The worker performed coordinator duties as scheduled and as needed 100% remotely. The worker was required to attend staff advocacy meetings and would be penalized if not in attendance by being terminated. The firm required the worker to personally perform services. The worker had no hiring authority.

The firm states that they did not provide any supplies, equipment or materials while the worker provided a personal laptop. The worker did not provide or lease any space or equipment. The worker did not incur any job-related expenses. The firm paid the worker an hourly pay. The firm did not give the worker access to advance pay. The firm did not carry worker's compensation insurance on the worker. The worker does take a financial risk and suffer a financial loss while working for the firm. The worker sets the rate of pay for services performed.

The worker states that the firm provided access to internal advocacy databases and a firm email account while the worker provided home office equipment and cell phone. Expenses are incurred by the worker for services performed such as home utilities and internet that are not reimbursed by the firm or any other party. The firm paid the worker an hourly rate of pay. The worker had no exposure to financial risk or loss by performing services.

The firm states that they did not provide benefits to the worker. The firm or worker could end the work relationship without incurring penalty. The worker did perform similar services for other firms and did not require approval from the firm. There were no non-compete agreements in place between the parties. The worker did not advertise their services to the public. The worker did not assemble or process products at home. The firm did not introduce the worker to its customers. Services were performed under the firms name. The worker no longer works for the firm, the firm ended the work relationship.

The worker states that there were no benefits provided to them by the firm. The firm or worker could end the work relationship without incurring penalty. The worker did not perform services for others while working for the firm. The worker did not advertise their services to the public or assemble products at home. The firm did introduce the worker to its customers as a representative. Services were performed under the firm's name. The firm ended the work relationship.

Analysis

Generally, the relationship of employer and employee exists when the person for whom the services are performed has the right to control and direct the individual who performs the services, not only as to what is to be done, but also how it is to be done. It is not necessary that the employer actually direct or control the individual, it is sufficient if he or she has the right to do so.

Section 31.3121(d)-1(a)(3) of the regulations provides that if the relationship of an employer and employee exists, the designation or description of the parties as anything other than that of employer and employee is immaterial. Thus, if an employer-employee relationship exists, any contractual designation of the employee as a partner, co-adventurer, agent, or independent contractor must be disregarded.

Therefore, a statement that a worker is an independent contractor pursuant to a written or verbal 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. Furthermore, whether there is an employment relationship is a question of fact and not subject to negotiation between the parties.

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. In this case, the firm states the firm did require the worker to attend community meetings but would not be penalized if not in attendance.

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.

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. In this case, the firm states the firm paid the worker an hourly rate of pay.

The right to discharge a worker 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 so long as the independent contractor produces a result that meets the contract specifications. In this case, the firm states the worker no longer works for the firm, the firm ended the work relationship.

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 the firm's business. Both parties retained the right to terminate the work relationship at any time without incurring a liability. There is no evidence to suggest the worker performed similar services for others as an independent contractor or advertised business services to the general public during the term of this work relationship. The classification of a worker as an independent contractor should not be based primarily on the fact that a worker's services may be used on a temporary, part-time, or as-needed basis. As noted above, common law factors are considered when examining the worker classification issue.

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 firm can obtain additional information related to worker classification online at www.irs.gov; Publication 4341.