
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**

he worker submitted a request for determination in connection with services performed for the firm in 2025 as an intern and a customer service representative. Services performed for the firm included warehouse shipping, packing, sorting, responding to emails, phones, social media correspondence, and troubleshooting customers' orders. The worker filed Form SS-8 as they believe they received Form 1099-NEC in error. The worker believes they were an employee as they received directives from the firm.

The firm's response states its business publishes tabletop games. The worker was engaged as a seasonal worker in the firm's warehouse. The worker also performed services as an intern and a customer service representative for the firm. Services performed included warehouse work, picking and packing orders, computer work, and emails. The worker was classified as an independent contractor as the worker was initially hired as a seasonal worker for the firm's warehouse and completed a Form W-9 as the time of hire. The internship was stated that the worker would be treated as an independent contractor. The firm then offered the worker the role of customer service on a trial basis but was terminated. The firm provided the worker's signed Form W-9, Request for Taxpayer Identification Number and Certification, which documented their Social Security Number.

The firm stated they provided the worker with basic warehouse operation training such as packing boxes and applying labels. Also, the firm provided the worker training for the services performed as an intern. The firm provided work assignments personally, by phone, and via email. The worker determined the methods by which those assignments were performed. If any problems or complaints arise, the firm would be contacted as well as responsible for resolution. The firm did not require the worker to complete reports or attend any meetings. Services were performed on the firm's premises, worker's home, and at conventions on an as-needed basis. The firm require the worker to personally perform services. The firm was responsible for the hiring and paying of substitutes or helpers. The worker stated the firm provided training and instructions regarding the services to be performed. The firm provided work assignments and determined the methods by which those assignments were performed. The worker was required to attend staff meetings. Services were performed on a regularly scheduled basis.

The firm stated they provide the worker with boxes, pack materials, and a computer. The worker provided a computer when providing services remotely. The worker did not lease space, equipment, or a facility. The worker incurred job-related expenses when traveling to conventions. The firm provided the worker with a housing stipend for temporary summer housing and reimbursed the worker for mileage, meals, and lodging when traveling to conventions. Customers paid the firm. The worker was paid an hourly rate of pay. The worker could not request advance pay. The worker did not take a financial risk and could not suffer a financial loss performing services. The firm set the rate of pay for the services provided and products sold. The firm did not carry workers' compensation insurance on the worker.

The firm stated there were no benefits made available to the worker. Either party could end the work relationship without penalty. The worker performed similar services for others during the term of the work relationship. There were no agreements prohibiting competition. Services were performed under the firm's business name. The firm ended the work relationship. The worker stated they did not perform similar services for others.

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, coadventurer, 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.

A continuing relationship was established rather than a one-time transaction taking place. A continuing relationship may exist where work is performed in frequently recurring although irregular intervals. The existence of a continuing relationship indicates an employer/employee relationship was established.

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. In the case the firm required the worker to personally perform services. The firm provided work assignments and ultimately assumed responsibility for problem resolution. These facts evidence the firm retained the right to direct and control the worker to the extent necessary to ensure satisfactory job performance in a manner acceptable to the firm. Based on the worker's education, past work experience, and work ethic the firm may not have needed to frequently exercise its right to direct and control the worker; however, the facts evidence the firm retained the right to do so if needed.

The need to direct and control a worker and their services should not be confused with the right to direct and control. In this case, the firm stated the worker obtained the job through a training program, the worker provided their services on behalf of and under the firm's business name rather than an entity of their own. The firm was responsible for the quality of the work performed by the worker and for the satisfaction of their customers. This gave the firm the right to direct and control the worker and their services in order to protect their financial investment, their business reputation, and their relationship with their customers.

The fact that a worker performed services on a part-time basis is a neutral fact. A temporary relationship is also a neutral fact. Under common-law rules, anyone who performs services for you is your employee if you can control what will be done and how it will be done. This is so even when you give the employee freedom of action. What matters is that you have the right to control the details of how the services are performed.

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 worker did not invest capital or assume business risks. 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. As acknowledged by the firm, the worker did not take a financial risk and could not suffer a financial loss by performing services. Based on the hourly rate of pay arrangement the worker could not realize a profit or incur a loss.

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 penalty. There is no evidence to suggest the worker performed similar services for others as an independent contractor or advertised business services to the 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.