

SS-8 Determination—Determination for Public Inspection

Occupation

06AAS Aides/Assistants

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**

It is our usual practice in cases of this type to solicit information from both parties involved. Upon the submission of the Form SS-8 from the worker, we requested information from the payer concerning this work relationship. The payer responded to our request for completion of Form SS-8.

From the information provided the payer is a volunteer ambulance service responding to 9-1-1 emergency calls only. The payer provides emergency medical services/responses when dispatched by the Public Safety Answering Point (PSAP) for their area. The worker was engaged under a verbal agreement from November 2015 to November 2016 to provide emergency medical care as a licensed paramedic.

The payer is responsible for answering 9-1-1 calls in their area. The payer states volunteers, such as the worker, are free to sign up for shifts or not sign up for shifts. When volunteers sign up for a shift, the only requirement is that they stay within their service area and respond when dispatched. The worker was free to run personal errands during his shift.

The payer states the worker was given HIPAA Refresher Training and OSHA required training. The worker was dispatched out by the PSAP center. Once the calls were completed and the ambulance was cleaned and made ready for the next call, the worker was free to go home or leave the station. The payer states the PSAP/dispatch determined how the worker performed his services. The worker was required to personally perform his services and the worker performed his services at the payer's location and at whatever location an emergency occurred. The payer states the worker was required to notify their director if any problems or complaints arose for their resolution. The worker was required to submit patient care reports showing what the chief complaint was of the emergency incident and what care was provided as well as any medication that may have been provided. At the start of the worker's shift, he would check the ambulance for supplies and equipment to make sure it was ready for any emergency. The firm states this routine took about 15 minutes then the worker was allowed to either stay at the station or go do personal errands as long as he stayed in the service area. The worker was not required to attend meetings.

The payer provided a fully equipped licensed ambulance to the worker in order to perform his services. The worker was responsible for providing his state's EMS license and skills to treat patients. The payer states the worker did not incur expenses and he was compensated via a stipend of a flat rate per 12 hour shift. The payer reported the worker's earnings on Forms 1099-MISC. The worker did not establish the level of payment for the services provided. The worker did not have an opportunity to incur a loss as a result of his services.

The worker was not eligible for employee benefits. The worker performed similar services for others but he did not advertise his services. The payer states they represented the worker as a volunteer EMS. Either party could terminate the work relationship at any time without either party incurring a liability. The payer states the work relationship ended when the worker stopped signing up for any shifts.

The payer provided a copy of a Form W-9 signed by the worker dated November 23, 2015.

Analysis

As in this case and 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.

Factors that illustrate whether there is a right to control how a worker performs a task include training and instructions. In this case, the worker was experienced in this line of work and did not require training or detailed instructions from the payer. The need to direct and control a worker and his services should not be confused with the right to direct and control. The worker provided his services on behalf of and under the payer's name rather than an entity of his own. The payer was responsible for the quality of the work performed by the worker and for the satisfaction and well-being of their clients. This gave the payer the right to direct and control the worker and his services in order to protect their financial investment, the reputation of their organization, and the health and safety of their clients.

While the worker may have had the opportunity to sign up for shifts or not, once the worker did report for duty, his services were performed under the guidelines and procedures of the payer's organization. Both employees (seasonal) and independent contractors can perform services when the needs of a business or organization warrants and therefore, does not determine the worker's employment tax status.

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.

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.

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 services provided by the payer's organization. Both parties retained the right to terminate the work relationship at any time without incurring a liability.

There was no evidence presented nor found in this investigation that indicates that the worker had an investment in a business related to the services he performed for the payer and offering those services to the public. It is possible for a person to work for a number of people, organizations, or firms concurrently due to financial need and the supporting of oneself and be an employee of one or all of whom engages him.

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, the payer's statement that the worker was an independent contractor pursuant to the completion and signing of a Form W-9 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 or the completion of a W-9 form.

Based on the above analysis, we conclude that the payer 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.