

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

The firm is a dental business. The firm engaged the worker through an employment agency to perform temporary dental hygienist services for the firm's business. The firm signed an agreement with the employment agency agreeing to pay the agency a set fee per day or week for providing temporary workers and to pay the worker a set fee per day or week for performing the services. The agreement notified the firm that the worker was an independent contractor with regard to the employment with the employment agency and advised the firm to consult with an account with regard to payment for services with regard to withholding requirements based on the worker's classification.

The worker was assigned to work at the firm's place of business as needed. The firm and worker determined the methods used to perform the services. The worker contacted the firm or the employment agency regarding problems or complaints for resolution. The employment agency invoiced the firm for services performed by the worker according to the agreement. The worker performed the services at the firm's place of business during the firm's hours of operation as needed. The firm did not require the worker to perform the services personally. The employment agency provided substitutes or helpers if needed according to the agreement.

The firm provided equipment, materials, and supplies. The worker provided personal items. The worker did not lease anything or incur any business expenses. The firm paid the worker a set amount per day based on the number of hours worked and paid the employment agency a set amount per day based on the hours worked as well. The customers paid the firm with their resources. The firm did not carry workers' compensation insurance. The firm determined the level of payment for the services paid in the agreement with the employment agency and paid to the firm by the customers.

There was a signed agreement between the firm and the employment agency. There was no agreement signed between the firm and the worker. The worker did perform similar services for others and was not required to obtain the firm's prior approval to do so. The worker did no advertising as a business to the public. The worker personally performed services at the firm's place of business on a temporary part-time basis under her name and credentials. Both parties retained the right to terminate the working relationship at any time without incurring any liability.

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. The firm entered into an agreement with an employment agency to engage temporary as needed services and once worker's came to work the firm had control over the services performed by the worker. 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 on-going business capital outlays with business risks an employer/employee relationship is evident. In this case, the worker had no financial investment in a business and did not incur any on-going business expenses. The firm had the business investment in equipment, materials and supplies needed in order for the worker to perform the services and control over profit and risk of loss with regard to the services the worker performed for the firm's business. The firm paid the worker a set amount per hour and paid the employment agency a set amount per hour for providing temporary workers based on the firm's business needs. The worker did not have control over profit and loss with regard to the services performed for the firm. These facts evidence financial control by the firm over the services performed by the worker.

There were no contracts between the firm and the worker. There was a contract between an employment agency and the firm regarding payment and engagement of part-time as needed or full time employees to perform services which addressed the firm to pay the worker's a set amount per hour for services and seek the advice of an accountant with regard to tax withholdings. The worker did not advertise to the public as being engaged in a business. The worker did perform similar services for others while performing part-time services for the firm and was not required to obtain the firm's prior approval. Although this could be an important factor to consider in an independent contractor relationship, this factor alone would not make the worker to be an independent contractor. Many workers have more than one job at a time and may be an employee in one or all working relationships depending on the autonomy of each one. The worker personally performed part-time as needed services for the firm under the firm's business name at the firm's place of business.

Both the firm and the worker retained the right to terminate the working relationship at any time without incurring any liability. 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.

Based on the information provided by both the firm and the worker we have determined the worker to have been an employee under common law.