

SS-8 Determination—Determination for Public Inspection

Occupation 07ESW Public Services/Safety/Security	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

Information provided indicates the firm is a private security service. The worker provided security services to the firm's clients for tax years 2015 through 2017. The firm reported the income on Form 1099-MISC. The firm feels the worker was an independent contractor as he signed a W-9 and sub contract agreement. The firm stated the worker provided invoices for services, no substantiation was provided. The firm indicated work was performed on a bid by bid basis. Copies of bids also were not provided. The firm stated work assignments were determined by accepting a bid for services. The firm as general contractor, resolved any issues that arose. The firm indicated there was no set schedule. Services were performed on customer locations. The worker was required to perform his services personally. The firm indicated the worker provided all equipment, supplies and transportation. The worker was paid per the submitted invoice. The customer paid the firm. Either party could terminate the work relationship without incurring a penalty or liability. The firm stated he was represented as a contractor for the firm. The worker stopped accepting bids for service.

The worker submitted the work classification request as he feels he was an employee of the firm. The worker stated he was required to follow company rules, wear a company uniform, had a company ID number and used company equipment, to include a company vehicle when necessary. the firm stated he was given a list of uniform and grooming standards and work schedules were determined by the firm (sample was provided.) Work assignments were determined by supervisors of the company. The worker indicated company dispatch resolved any issues. The worker was required to submit incident reports as needed (sample provided.) The worker stated he was required to call in to dispatch to clock in, performed assigned job and called in again to clock out. Services were performed at the firm's customer locations. He agreed he was to perform his services personally. The worker indicated he was paid by the hour and was given Holiday pay. He agreed the customer paid the firm. He stated he was represented as an employee. He agreed he stopped taking assignments.

ANALYSIS

The question of whether an individual is an independent contractor or an employee is one that is determined through consideration of the facts of a particular case along with the application of law and regulations for worker classification issues, known as "common law." Common law flows chiefly from court decisions and is a major part of the justice system of the United States. Under the common law, the treatment of a worker as an independent contractor or an employee originates from the legal definitions developed in the law and it depends on the payer's right to direct and control the worker in the performance of his or her duties. Section 3121(d)(2) of the Code provides that the term "employee" means any individual defined as an employee by using the usual common law rules.

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.

In determining whether an individual is an employee or an independent contractor under the common law, all evidence of both control and lack of control or independence must be considered. We must examine the relationship of the worker and the business. We consider facts that show a right to direct or control how the worker performs the specific tasks for which he or she is hired, who controls the financial aspects of the worker's activities, and how the parties perceive their relationship. The degree of importance of each factor varies depending on the occupation and the context in which the services are performed.

Therefore, your 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.

-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.

-Integration of the worker's services into the business operations generally shows that the worker is subject to direction and control. When the succes

Analysis

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-Control over the place of work is indicated when the person or persons for whom the services are performed have the right to compel the worker to travel a designated route, to canvass a territory within a certain time, or to work at specific places as required. If the person or persons retain the right to control the order or sequence of the work, this is sufficient to indicate an employer-employee relationship.

We have applied the above law to the information submitted. 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.

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 financial investment.

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 your business. Both parties retained the right to terminate the work relationship at any time without incurring a liability.

CONCLUSION

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. Although the firm had indicated work assignments were determined by bids, no proof or substantiation was provided to show the worker placed bids on the work performed. The W-9 was signed by the worker on the day work began for the firm, indicating the worker did not already have a business identification number which he would have had if he was in business for himself. The services were performed for the firm's clients, in the order as scheduled by the firm.

The worker was required to provide incident reports to the firm. The worker was required to wear company uniforms and follow company policies. All work was performed under the firm's business name, for the firm's clients, as had been arranged between the firm and their client. (For instance one assignment they were required to utilize the firm's vehicles, patrol regularly and contact disptach on an hourly basis, etc.)