

SS-8 Determination—Determination for Public Inspection

Occupation

07ESW Enforcement/Security Workers

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 non-profit corporation operating housing projects and has requested a determination of worker status for workers who perform security guard services. Only two workers have responded and indicated that they received a 2017 Form 1099-MISC for their services and continue to provide those services in 2018. There were no written agreements.

In this case, the workers were city uniformed police officers and therefore were experienced in providing security services. The firm and the workers agreed on the information provided. The firm provided no training. It was the workers who determined their days and hours as well as the methods by which the assignments were performed. According to the firm, their services were coordinated by one worker and that the police department was not involved in the arrangement with the firm. The firm or managing agent would be contacted if any problems or issues arose. The workers were not required to submit reports unless there was an incident (then there would be a police department report). The workers' routine consisted of being an on-site presence for observation of activities. They worked at the firm's locations, police department and/or court when needed. The workers were required to provide their services personally.

The workers provided any necessary equipment and were responsible for their equipment and uniform maintenance expenses as well as travel expenses. They were paid by the hour and had no other economic risk. The level of payment for services was agreed to by all parties.

All parties also agreed that there were no benefits. Any party could terminate the relationship without incurring a liability. The workers did perform similar services for others. The relationships have not ended.

Analysis

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. The relationship of the worker and the business must be examined. 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 should be considered. 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.

Factors that illustrate whether there is a right to control how a worker performs a task include training and instructions. In this case, the firm did not retain the right to change the worker's methods and to direct the worker to the extent necessary to protect its financial investment. The workers set their own schedules, determined their own methods, and directed/coordinated their own activities for the firm.

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 firm provided none of the equipment needed by the workers and did not reimburse them for any expenses. While payment by the hour generally points to an employer-employee relationship, in this case, however, no other elements supporting that type of relationship were present.

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 workers' services were not part of the regular activities of the firm. There were no benefits, and as the firm did not choose the worker, no permanency of the relationship could be established. All parties perceived the workers' relationships to be those of independent contractors. No evidence was provided to reach any other conclusion.

Based on the above analysis, and on the facts submitted, we conclude that the firm did not have the right to exercise direction and control over the workers to the degree necessary to establish that the workers were common law employees and not independent contractors operating a trade or business.