

SS-8 Determination—Determination for Public Inspection

Occupation 08MUS.4 MUSICIAN	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

In this case, the firm is a church and the worker was engaged as a musician. He received a 2013 1099-MISC for his services; he also provided services in 2014 as well. There was no written agreement.

The worker noted that he was to be there on time; he learned all the assigned music and performed during rehearsals as well as at the event. He received his work assignments by phone or emails from the Minister of Music and Arts. Both parties agreed that the church's minister of music determined the methods by which the assignments were performed and would be contacted if any problems or issues arose. No reports were required. There were no regularly scheduled hours as the worker was hired on an as-needed basis. The worker's routine consisted of learning the material, practicing, and then performing the songs. The worker provided his services mostly at the church's location. Though there were no meetings, the worker was required to attend rehearsals in advance. Both parties agreed that the worker was to personally provide the services with only the church hiring and paying other substitute workers.

Both the church and the worker agreed that the church provided the piano or keyboard. The worker incurred travel expenses. He received a check on the same day that he worked although the church noted that it paid against the invoice rendered for services. The church provided copies of invoices that generated the worker's payments as evidence. Both agreed that the worker had no financial risk. Each party indicated that the other established the level of payment for services.

Both the church and the worker agreed that there were no benefits and that either party could terminate the relationship without incurring a liability. The worker did perform similar services for others. The church noted that the worker provided services under his own name and did not know if he advertised his services. The relationship had not ended (as of the Form SS-8 responses.)

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. 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.

Factors that illustrate whether there is a right to control how a worker performs a task include training and instructions. In this case, the church retained the right to change the worker's methods and to direct the worker to the extent necessary to protect its mission. It is acknowledged that the worker was already a skilled musician and did not need training. However, the church provided the worker with his instructions, a work schedule and his assignments by email when his services were required. He performed his services according to the church's rehearsal and event schedules. 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. The worker also provided his services on a continuous basis throughout the time period involved. A continuing relationship between the worker and the person or persons for whom the services are performed indicates that an employer-employee relationship exists. A continuing relationship may exist where work is performed in frequently recurring although irregular intervals.

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. The worker received a set amount and had no other economic risk. The church provided the facility/venue as well as the musical instrument in order for the worker to provide his services illustrating the worker's reliance on the firm. Lack of significant investment by a person in facilities or equipment used in performing services for another indicates dependence on the employer and, accordingly, the existence of an employer-employee relationship. 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.

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. There were no benefits and there was no written agreement. The worker was engaged as a musician by the church to provide music for its activities. When doing so, the worker was not engaged in an independent enterprise, but rather the services performed by the worker were part of the necessary activities of the church's operations and mission. Integration of the worker's services into the business operations generally shows that the worker is subject to direction and control. When the success or continuation of a business depends to an appreciable degree upon the performance of certain services, the workers who perform those services must necessarily be subject to a certain amount of control by the owner of the business.

It is acknowledged that the worker provided similar services for others; but the worker did not maintain a place of business nor advertise. If a worker performs more than de minimis services for a multiple of unrelated persons or firms at the same time, that factor generally indicates that the worker is an independent contractor. See Rev. Rul. 70-572, 1970-2 C.B. 221. However, it is possible for a person to work for a number of people or firms concurrently and be an employee of one or all of them.

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

Many religious, charitable, educational, or other nonprofit organizations are exempt from federal income tax. However, they must withhold federal income tax from their employees' pay and report each employee's compensation on Form W-2. If an employee is paid \$100 or more during a calendar year, his/her wages are also subject to FICA taxes (social security and Medicare).

Churches or church-controlled organizations that are opposed to the payment of social security and Medicare taxes and that have filed Form 8274 for exemption do not pay social security and Medicare taxes. Their employees, however, are subject to self-employment tax. Payments for services performed by an employee of a nonprofit organization described in section 501(c)(3) are not subject to FUTA taxes.