

SS-8 Determination—Determination for Public Inspection

Occupation 09CMA Manager	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

The worker initiated the request for a determination of her work status as a substitute mail carrier in tax years 2017 through 2019. In this capacity she sorted mail and packages to be delivered, loaded the vehicle, drove the whole rural route or maybe half. There was no written agreement; she was hired to work a few days a week as needed and sometimes with the owner, by herself, or with another employee. The firm's business is described as the contract owner with the [REDACTED]

The firm's response was signed by the firm/contract owner. The firm's business is as a contract rural carrier with the [REDACTED] and, the worker provided services as a substitute mail carrier, sorting and delivering mail and parcels to rural customers.

The worker indicated she was trained as to the sorting and delivering of mail and packages by the firm. The job assignments were determined by the firm. The firm determined the methods by which the worker's services were performed; any problems or complaints encountered by the worker were directed to the firm or the postmaster for resolution. The services were rendered at the post office or on the 80-mile route. The worker was required to perform the services personally; any additional personnel were hired and paid by the firm. She stated that if it was a big mail day such as a Monday or around the holidays, that she, the other employee, and owner may work. If the owner had something going on she may have one or both workers cover the sorting and delivery.

The firm responded that the training and instructions as to the work needed to be done was per the firm's contract with the USPS. The USPS determined the methods by which the worker's services were performed. Any problems or complaints encountered by the worker were directed to the Postmaster for resolution. The services were rendered at the post office. The worker was required to perform the services personally; any additional personnel were hired and paid by the firm after drug screens, application, and finger printing are done through and approved by the USPS.

The firm and worker concur that the firm provided the vehicle, fuel, and vehicle maintenance; and, the worker furnished nothing, did not lease equipment, space, or a facility, and did not incur expenses in the performance of her job. The worker stated she was paid piecework. In a phone call to the worker she stated, that if she sorted mail only she was paid \$X/day, sorted mail and did 1/2 the delivery route it was \$XX/day, or sorted mail and did the full delivery route she was paid \$XXX/day. The firm indicated the 'per job' payment was per trip; and, every time she contracted the worker to work she was contracted for the day, noting that mail volume was higher on a Monday or during the holiday season. The firm was paid under the contract with the USPS. Both parties concur the worker was not covered under the firm's workers' compensation insurance policy, she was not at risk for a financial loss in this work relationship, and she did not establish level of payment for services provided.

The firm and worker acknowledged that there were no benefits extended to the worker, that either party could terminate the work relationship without incurring a liability or penalty, and the worker was not performing same or similar services for others during the same time frame. The worker was a substitute; and, the firm, as the party responsible for hiring her own substitutes, did not need her as a substitute and the work relationship ended.

Analysis

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.

If the services must be rendered personally, presumably the person or persons for whom the services are performed are interested in the methods used to accomplish the work as well as in the results.

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.

Payment by the hour, week, or month generally points to an employer-employee relationship, provided that this method of payment is not just a convenient way of paying a lump sum agreed upon as the cost of a job. In such instances, the firm assumes the hazard that the services of the worker will be proportionate to the regular payments. This action warrants the assumption that, to protect its investment, the firm has the right to direct and control the performance of the workers. Also, workers are assumed to be employees if they are guaranteed a minimum salary or are given a drawing account of a specified amount that need not be repaid when it exceeds earnings.

A person who can realize a profit or suffer a loss as a result of his or her services is generally an independent contractor, while the person who cannot is an employee. "Profit or loss" implies the use of capital by a person in an independent business of his or her own. The risk that a worker will not receive payment for his or her services, however, is common to both independent contractors and employees and, thus, does not constitute a sufficient economic risk to support treatment as an independent contractor. If a worker loses payment from the firm's customer for poor work, the firm shares the risk of such loss. Control of the firm over the worker would be necessary in order to reduce the risk of financial loss to the firm. The opportunity for higher earnings or of gain or loss from a commission arrangement is not considered profit or loss.

We have considered the information provided by both parties this work relationship. In this case, the firm retained the right to change the worker's methods and to direct the worker to the extent necessary to protect its financial investment and business reputation and to ensure its customers' satisfaction and that its contractual obligations were met. The worker was not operating a separate and distinct business; 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. 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. 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 firm's business.

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.