

SS-8 Determination—Determination for Public Inspection

Occupation 09CMA.1 Courier/messenger	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 payer is a law firm. As the owner of the firm, you engaged the worker to run errands and pick up citations from DMV, police stations, and court houses. You reported the worker's remuneration on Forms 1099-MISC for 2011 and 2012.

Information from the parties supports that you provided the worker directions as to the agency and where to drop the reports off. She picked up reports on a set schedule and returned them to your firm. If problems or complaints occurred, the worker contacted you for resolution. The worker was required to perform her services personally.

You provided the copier and paper. The worker was responsible for her transportation costs. You paid the worker a set fee. Customers paid you directly at prices that you established. You did not cover the worker under workers' compensation. Neither party indicated an investment by the worker in the firm or a related business, or the risk of the worker incurring a financial loss beyond the normal loss of compensation.

You did not make benefits available to the worker. The worker did not advertise her services or provide similar services for others during the same time period. Both parties reserved the right to terminate the work relationship without incurring a penalty or liability, and in fact, the worker terminated the work relationship.

Analysis

Factors that illustrate whether there was a right to control how a worker performed a task include training and instructions. In this case, you provided the worker with instructions. You were responsible for resolving any problems that may have occurred, showing you retained the right to change the worker's methods and to direct the worker to the extent necessary to protect your financial investment. The worker was required to follow the schedule that you set and to travel to specific agencies. 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. The worker was required to perform her services personally, meaning she could not engage and pay others to perform services for you on her behalf. 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. These facts show that you retained behavioral control over the services of the worker.

Factors that illustrate whether there was 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. "Profit or loss" implies the use of capital by a person in an independent business of his or her own. 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. You paid the worker at a set rate per week. Workers are assumed to be employees if they are guaranteed a minimum salary. These facts show that you retained control over the financial aspects of the worker's services.

Factors that illustrate how the parties perceived 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 were part of the service recipient's regular business activities. In this case, the worker performed her services on a continuing basis. 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. The worker performed her services under your firm's name. 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 firm's business. 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. Although you did not provide benefits to the worker, the worker terminated the work relationship without incurring a liability. 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. These facts show that you retained control over the work relationship and services of the worker.

Based on the above analysis, we conclude that you 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.