

SS-8 Determination—Determination for Public Inspection

Occupation

09DVC Drivers & Vessel Control

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 auto dealership selling new/used parts and service. The firm engaged the worker to deliver parts as needed for the firm's business operation. The firm paid the worker as both an employee and independent contractor during the working relationship and the services remained the same. The firm assigned jobs based on the firm's business needs. The firm required the worker to punch in and out on a time clock. The firm or firm's management assigned the worker jobs to perform. The firm or firm's management determined the methods used by the worker to perform the services. The firm required the worker to contact the firm or firm's management regarding problems or complaints for resolution. The firm required the worker to provide the firm with invoices on deliveries made. The worker performed the services at the firm's place of business and over the road from firm's customers location and firm's business location. The worker performed the services personally. The firm hired and paid substitutes or helpers if needed.

The firm provided the vehicle and the worker did not lease equipment or space or incur any business expenses. The firm paid the worker an hourly wage. The customers paid the firm. The firm determined the level of payment for the services and products sold. The worker could not suffer any economic loss and had no financial risk.

There were no contracts between the firm and worker. The firm did not provide the worker with any benefits. The worker did not perform similar services for others or advertise as a business to the public. The firm did no prohibit the worker from doing so. The firm referred to the worker as the firm's runner/driver to the customers. Both parties retained the right to terminate the working relationship at any time without incurring any liability. The firm terminated the working relationship due to lack of work.

The firm paid the worker as an employee and as an independent contractor for the services during the working relationship and the services remained the same except per the firm the worker performed services as needed when paid as an independent contractor.

Analysis

When a firm determines or retains the right to determine what, how, when, and where workers perform services an employer/employee relationship exists. For Federal employment tax purposes, it is not necessary for firms to exert direct or continuous control over worker's services. It is not necessary for services to be performed on a full time basis. The anatomy of a work relationship determines a worker's status whether full-time or part-time. Also, the methods used by workers to perform services are not only controlled through verbal instructions, but also by equipment, materials, and supplies made available for use in the performance of the services. These facts evidence behavioral control by the firm over the services performed by the worker.

When workers do not have a significant financial investment in a business related to the services performed for a firm requiring on-going significant business capital outlays with business risks an employer/employee relationship is evident. 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. In this case, the firm had the significant financial investments in the business. The firm had control over the profits made and the risk of loss. These facts show that the firm retained control over the financial aspects of the worker's services. These facts evidence financial control by the firm over the services performed by the worker.

There were no written contracts between the firm and the worker. The worker did not perform similar services for others or advertise as a business to the public but personally performed services as needed for the firm's business under the firm's business name over several years. The firm referred to the worker as both an employee team member and contractor delivery driver during the working relationship and paid the worker as both an employee and contractor over the years.

Both the firm and worker retained the right to terminate the working relationship at any time without incurring any liability. The right to discharge a worker at any time without incurring a liability for termination is a factor indicating that the worker is an employee and the person possessing the right is an employer. An employer exercises control through the threat of dismissal, which causes the worker to obey the employer's instructions. An independent contractor, on the other hand, cannot be fired without a liability so long as the independent contractor produces a result that meets the contract specifications. Likewise, 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. The firm terminated the working relationship due to lack of work without incurring any liability.

Based on the autonomy the worker was an employee under common law during the entire working relationship.