

SS-8 Determination—Determination for Public Inspection

Occupation 09DVC Mover	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 firm is a corporation operating a moving company. The firm engaged the worker as a mover. The worker was required to fill out an application for the position. There was a written agreement between the two parties.

The worker stated he received daily duties from the firm. The worker stated the firm gave him his assignments but the firm stated the worker chose his own assignments. The worker ultimately relied upon the firm to resolve his problems and complaints. The worker stated he was required to report to the firm verbally. The worker's schedule was dependent upon the firm's schedule for the day. The worker performed his services at the firm's place of business or at the firm's customers' locations. The worker stated he was required to perform his services personally and the firm said the worker wasn't required to perform his services personally.

The firm provided the vehicle and incurred all operating expenses to keep the rig on the road. The worker provided his own personal and tools. The worker was paid on an hourly basis. The customers paid the firm for the services they received. The worker could not suffer a significant loss in the performance of his duties.

The worker received no benefits in the performance of his duties. Either party could terminate the relationship without incurring a liability. The worker stated he did not perform similar services for others. The worker was represented as a laborer. The firm discharged the worker from his services.

The firm provided us with a copy of the Independent Contractor Agreement.

The company engaged the worker to render moving and delivery services both at the company's facility and elsewhere according to the schedule determined with the company, based upon the company's needs, as it rises.

The worker would be paid \$10/hr.

Company would reimburse worker for reasonable & necessary expenses.

The company provided the necessary tools and equipment.

The worker may not, without the written consent of the company, assign, subcontract or delegate its obligation.

Analysis

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.

The statement that the worker was an independent contractor pursuant to a verbal is without merit. For federal employment tax purposes, it is the actual working relationship that is controlling and not the terms of the contract (oral or written) between the parties.

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 the instant case, the worker performed services as a mover for the firm's moving company which demonstrated the worker's services were integrated into the firm's daily operations. This was further demonstrated since the firm had the worker fill out an application for the position which showed the firm required certain requirements from the worker as a mover.

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. In the instant case, it was stated in the agreement the worker was required to perform his services personally which demonstrated the firm was interested in the methods used as well as the end result.

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. In the instant case, the worker's hourly pay was outlined in the agreement between the two parties which showed financial control by 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. In the instant case, the worker could not suffer a significant loss as operating her own business. The firm provided the vehicle and the tools which showed the firm was the party with the significant investment in operating their own business. The worker could not suffer a significant loss in the performance of his duties.

The worker was an employee according to common law. The information provided by both parties showed the worker received his duties from the firm which showed control over the worker's services. Control was shown by the firm setting the worker's schedule according to the firm's business needs. The fact the worker was required to perform his services personally showed the firm the firm was interested in the methods used as well as the end result and this was further demonstrated by the fact the worker was required to fill out an application for the position. The fact the worker filled out an application demonstrated the firm was looking for specific qualification from a worker. The firm set the hourly rate of pay in the agreement between the two parties which showed financial control by the firm. The fact the worker could not suffer a significant loss in the performance of his duties demonstrated the worker did not have a significant investment in operating his own business. The worker performed services as a mover for the firm's moving company which demonstrated the worker's services were integrated into the firm's daily operations.

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.

Please go to www.irs.gov for further information.

Firm: Publication 4341

Worker: Notice 989