

SS-8 Determination—Determination for Public Inspection

Occupation 09DVC Drivers & Vessel Control	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

Information provided indicated the firm is a transportation and cleaning company. The worker provided services as a driver for the firm for tax years 2017 and 2018. The worker responded to an advertisement the firm had posted. The firm stated the worker was advised from the beginning that it was an independent contract position. The firm stated the worker requested to be paid under the table, which was refused. The pay rate was then negotiated from Fifteen dollars per hour to Twenty dollars per hour to cover taxes. A copy of the agreement has been provided. The firm indicated no training or instructions were given. The client must approve of the drive. The driver continues to provide services until the client cancels the contract. The client and worker directly worked out what assignments were needed when and how. If a problem arose, the worker would contact their contact person at the client's office. The worker provided time sheets and mileage reports. The firm then bills the client based on those reports. The firm indicated they are unaware of the daily routine, except the driver is required to pick up individuals in the morning and return them in the afternoon/evening. The firm indicated services were performed at the client's office. The worker was required to perform services personally. The firm provided the vehicle. The worker is paid by the hour. The firm indicated the client reimbursed for any out of pocket expenses. The client paid the firm. Either party could terminate the work relationship without incurring a penalty or liability. The firm indicated the worker terminated the contract.

The worker indicated she received daily e-mail schedule with patients information and directions to pick them up. She performed services under a supervisor. Services were performed at the firm premises. She performed services approximately thirty hours per week. The worker indicated the firm hired and paid all workers. the worker agreed the firm provided either the bus or a van. She agreed she was paid by the hour and the customer paid the firm. the worker indicated all work was performed under the firm's business name. The worker indicated she quit.

Analysis

The question of whether an individual is an independent contractor or an employee is one that is determined through consideration of the facts of a particular case along with the application of law and regulations for worker classification issues, known as “common law.” Common law flows chiefly from court decisions and is a major part of the justice system of the United States. Under the common law, the treatment of a worker as an independent contractor or an employee originates from the legal definitions developed in the law and it depends on the payer’s right to direct and control the worker in the performance of his or her duties. Section 3121(d)(2) of the Code provides that the term “employee” means any individual defined as an employee by using the usual common law rules.

Generally, the relationship of employer and employee exists when the person for whom the services are performed has the right to control and direct the individual who performs the services, not only as to what is to be done, but also how it is to be done. It is not necessary that the employer actually direct or control the individual, it is sufficient if he or she has the right to do so.

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. We must examine the relationship of the worker and the business. We consider 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. The degree of importance of each factor varies depending on the occupation and the context in which the services are performed.

Therefore, your statement that the worker was an independent contractor pursuant to an agreement 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.

We have applied the above law to the information submitted. 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.

Evidence of control generally falls into three categories: behavioral control, financial control, and relationship of the parties, which are collectively referred to as the categories of evidence. In weighing the evidence, careful consideration has been given to the factors outlined below.

Factors that illustrate whether there is a right to control how a worker performs a task include training and instructions. In this case, you retained the right to change the worker’s methods and to direct the worker to the extent necessary to protect your financial investment.

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.

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. 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 your business. Both parties retained the right to terminate the work relationship at any time without incurring a liability.

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. Although the worker had the autonomy to carry out the services, without direct instruction by the firm (i.e. which route to take etc.) The firm obtains and retains the contract with their client, All communication is between the firm and their client. The firm bills and collects from their client. Therefore, all work was performed under the firm’s business name, and reputation, in order to fulfill their commitments made to their client for the services agreed upon, whether it be driving services or cleaning services. The firm provided the bus or van, GPS and EZPass, indicating the worker had no business or financial investment in the services provided. The worker was paid by the hour for the work performed.