

SS-8 Determination—Determination for Public Inspection

Occupation
09DVC Driver

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

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Facts of Case

The firm, a non-profit organization, initiated the request for a determination of the worker's status as a driver of seniors needing rides to medical appointments, social events, and shopping in tax years 2018 and 2019. The firm's business is described as providing transportation to senior citizens.

The worker was contacted and her response indicates she is a van driver for seniors to medical appointments, grocery stores, and social events.

The firm and worker acknowledge the firm provided the guidelines as they pertain to the van and clients. The job assignments are conveyed via a calendar that is sent to her for each quarter with times and dates. The firm determines the methods by which the worker's services are performed; and, any problems or complaints encountered by the worker are directed to the firm for resolution. The services are rendered depending on the event and how many seniors need to be picked up. The worker is required to perform the services personally; any additional personnel would be hired and paid by the firm.

Both parties concur the firm provides the vehicle, van trip log, toll pass, fuels, step-stool, the calendar of events, and client guidelines. The worker furnishes nothing, except on a rare occasion her personal vehicle for which she is reimbursed for mileage and fuel. The worker is reimbursed for event fees and parking. The worker is paid an hourly wage; customers make donations to the firm. The worker is not covered under the firm's workers' compensation insurance policy. The firm and worker agree the worker is not at risk for a financial loss in this work relationship (unless she was involved in an accident). The worker did not establish level of payment for services provided.

There are no benefits extended to the worker. Either party could terminate the work relationship without incurring a liability or penalty. The worker is not performing same or similar services.

The Van Driver Guidelines cover, in part, the completion of the van log, assisting clients entering and exiting the van, seatbelt requirements, fuel card and receipts, and van should be maintained and have a 1/2 tank of gas at all times. Van Guidelines for Clients cover general rules, donations, passengers, attendance, and safety.

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.

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. Also, if the firm has the right to control the equipment, it is unlikely the worker had an investment in facilities.

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 to this work relationship. In this case, the firm retains 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 are met. The worker is not operating a separate and distinct business; the worker did not invest capital or assume business risks, and therefore, does 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 is not engaged in an independent enterprise, but rather the services performed by the worker are a necessary and integral part of the firm's business.

CONCLUSION

Based on the above analysis, we conclude that the firm has the right to exercise direction and control over the worker to the degree necessary to establish that the worker is a common law employee, and not an independent contractor operating a trade or business.