

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 worker initiated the request for a determination of her work status as a [REDACTED] delivery driver in tax years 2017 to 2019, for which she received Form 1099-MISC. The firm's business is described as mail service for the [REDACTED].

The firm's response was signed by the Accounts Manager. The firm's business was not described. The worker provided services as a route delivery carrier. The agreement was to complete the delivery route for a flat rate.

The worker stated there was no written contract. The firm told the worker how to do the job and what hours were available and she was given basic training on the policies on how to be a [REDACTED] mail carrier, along with job shadowing. The job assignments were scheduled by the firm and usually via a phone call; and, if the worker could not make it in she was to notify the firm. The firm determined the methods by which the worker's services were performed. Any problems or complaints encountered by the worker were directed to the firm for resolution. The worker's services were rendered starting at 6am when she arrived to case sort the mail and then deliver until 1 or 2pm in the area designated. The worker was required to perform the services personally, with any additional personnel being hired and paid by the firm.

According to the firm, the worker had previous experience. The job assignment was the same route every day. The independent contractors determined the methods by which they performed their services. Any problems or complaints encountered by the worker were directed to the customer for resolution. The firm stated the worker's services were rendered on the contracted route and there was no set schedule or routine. The worker was required to perform the services personally; however, any additional personnel were hired by the firm, but the compensation came out of worker's pay.

The worker responded that the firm provided vehicles, mail crates, [REDACTED] slips, and supplies. The worker furnished her clothing. On occasion the worker used her vehicle for which she incurred fuel expenses and sometimes the firm reimbursed her. The worker did not lease equipment, space, or a facility. The worker was paid a salary. The customers paid the firm. The worker was not covered under the firm's workers' compensation insurance policy. The worker indicated she was not at risk for a financial loss in this work relationship. The worker did not establish the level of payment for services provided, indicating it was the firm or [REDACTED].

The firm's response was 'not applicable' as to the what the firm and worker may have furnished for equipment, materials, or supplies. The worker did not lease equipment, space, or a facility. The firm paid the worker a lump sum; the customers paid the firm. The worker was not covered under the firm's workers' compensation insurance policy. The worker was not at risk for a financial loss in this work relationship. The firm stated the worker established the level of payment for services provided.

Both parties acknowledge that there were no benefits extended to the worker and that either party could terminate the work relationship without incurring a liability or penalty. The worker stated she was not performing same or similar services for others during the same time frame; and, it was unknown to the firm whether the worker was/not performing same or similar services for others during the same time frame. The firm replied the work relationship ended when the worker required more money.

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.

Training a worker by requiring an experienced employee to work with the worker, by corresponding with the worker, by requiring the worker to attend meetings, or by using other methods, indicates that the person or persons for whom the services are performed want the services performed in a particular method or manner. This is true even if the training was only given once at the beginning of the work 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.

The firm's 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 considered the information provided by both parties to this work relationship. In this case, the firm retained 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 were met. The worker was not operating a separate and distinct business; 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. 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 was not engaged in an independent enterprise, but rather the services performed by the worker were a necessary and integral part of the firm's business.

CONCLUSION

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 see www.irs.gov for more information including Publication 4341 Information Guide for Employers Filing Form 941 or Form 944 Frequently Asked Questions about the Reclassification of Workers as Employees and Publication 15 (Circular E) Employer's Tax Guide.