

SS-8 Determination—Determination for Public Inspection

Occupation

Delivery/Transportation

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 pizzeria. The firm makes and sells pizza. They also provide delivery. The firm engages the worker as a delivery driver. The firm's perspective is since the worker gets paid with a 1099-Misc and a delivery driver, he is considered an independent contractor. The worker submitted a Form SS-8 after receiving a Form 1099-Misc from the firm. The firm replied with a Form SS-8.

The worker stated he received training from the firm. He was trained on how to use the cash register by the firm's manager and other employees. Both parties agree the worker receives his work assignments from the firm and the firm determines the methods by which those assignments are performed. According to the firm, they are responsible for problem resolution. The worker works Friday's 3:00 pm to 10:00 pm, Saturday's 11:00 am to 3:00 pm and Sunday's 3:00 pm to 9:00 pm. The worker describes his routine as delivering food when there are deliveries to be made. He states when there are no deliveries he takes orders and restocks inventory. The worker states he sweeps and mops the floors, wipes down tables, restocks inventory, and takes out the garbage before the firm closes. He also specified he is responsible for opening the restaurant on Saturdays. The firm indicated the worker folds pizza boxes and delivers food when needed. He received regular remunerations for his services. The worker is not required to submit reports. He performs the services on both the firm's premises and on the premises of the firm's customers. The worker is not required to attend any meetings. The relationship between the parties is continuous, as opposed to a one-time transaction. The nature of this relationship contemplates that the worker performs the services personally. The worker works exclusively and on a continuing basis for the firm. His services are an integral and necessary part of the services the firm provided to its customers. The firm hires and pays any substitutes or helpers.

The worker does not furnish any of the tools or equipment used in performing the services, except for his car. The worker does not lease equipment. The firm determines the fees to be charged. The worker does not incur any significant business expenses. The worker is paid an hourly wage. The firm does not allow the worker a drawing account, or advances against anticipated earnings. The firm's customers pay the firm. The firm indicated it does carry worker's compensation insurance on the worker. The worker does not have a substantial investment in equipment or facilities used in the work and does not assume the usual business risks of an independent enterprise.

The worker is not eligible for sick pay, vacation pay, health insurance, or bonuses. Either party can terminate the work relationship at any time without incurring a penalty or liability. The worker is not a member of a union. The worker does not perform the services for others. He does not advertise his services to the public or maintain an office, shop, or other place of business. He is required to perform the services under the name of the firm. The relationship between the parties is ongoing.

The information submitted on the Form SS-8 and the internal research conducted provided enough information to provide a determination for this case. The facts of the case indicate that the firm had the right to control the worker.

Analysis

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.

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.

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.

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.

Based on the common-law principles, the firm had the right to direct and control the worker. The worker shall be found to be an employee for Federal tax purposes.

The firm can obtain additional information related to worker classification online at www.irs.gov; Publication 4341.