

SS-8 Determination—Determination for Public Inspection

Occupation

09NHA Deliveries/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 in the business of providing over the road trucking services. The worker was engaged to find the deliveries and jobs, relaying the information to the firm as a dispatcher. She received a Form 1099-MISC for her services in 2016 and 2017. There was no written agreement.

The worker was told to find delivery jobs and to book approximately nine vehicles per load. The firm noted that she received no instructions and chose the manner and method of completing her work. The firm, however, defined the worker's territory based upon its pick-up/delivery requirements/territories as the worker essentially 'sold' the firm's carrier/transportation services. She received her work assignments, that is the firm's requirements, via the phone or text. Both parties did agree that the worker was responsible for finding new jobs through Central Dispatch which provided leads to brokers who work for customers. Valid leads/contracts would be forwarded to the firm. Each party indicated that the other determined the methods by which the assignments were performed but both agreed that the worker would contact the firm if any issues or problems arose. Both parties also noted that there were no required reports. The worker indicated that she was to confirm the contracts before pick-up, save the dispatches to email them to firm and, additionally, perform load curb weight estimates. The firm noted that the worker's routine consisted of forwarding dispatch information to the firm at her discretion. The worker, however, noted that she started looking for more contract work about four days before the firm/driver's arrival and worked until the firm let her know that he was fully booked. The worker worked from her home. The worker noted that there were meetings initially in the relationship as she assisted the firm in establishing his business. She was to required to personally provide the services though the firm disagreed.

According to the worker, the firm provided the Central Dispatch software system to search and book contracts as well as firm email, Username and passwords. The worker supplied a computer, phone, internet service and utilities. She was not reimbursed for her expenses. The firm, however, noted that it provided nothing with the worker providing everything. The worker received a set salary, paid bi-monthly, and sometimes paid extra for additional work; the firm noted that she received a flat monthly rate. Both parties agreed that the worker had no other economic risk. Both also agreed that the customer paid the firm and that the worker did not establish the level of payment for services.

Both the firm and the worker agreed that there were no benefits and that either party could terminate the relationship without incurring a liability. Both parties agreed that the worker performed similar services for others. The worker noted that she was represented as the firm's dispatcher; the firm agreed that she was a dispatcher but was not a representative of the firm. The relationship has ended.

Analysis

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. The relationship of the worker and the business must be examined. 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 should be considered. 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.

Factors that illustrate whether there is a right to control how a worker performs a task include training and instructions. 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. The worker was experienced in locating and booking transportation jobs. In fact, both the worker and firm's owner worked for the same company at one point. Therefore, the worker likely did not need any training and instructions on what needed to be done. However, her work assignments involved booking jobs based on the firm's required transportation runs. It is acknowledged that the worker did not work regular set scheduled hours but worked when the firm's transportation runs occurred. If the nature of the occupation makes fixed hours impractical, a requirement that workers be on the job at certain times is an element of control. The worker worked from her home. Work done off the premises of the person or persons receiving the services, such as at the office of the worker, indicates some freedom from control. However, this fact by itself does not mean that the worker is not an employee. The importance of this factor depends on the nature of the service involved and the extent to which an employer generally would require that employees perform such services on the employer's premises. Since the firm provided the Central Dispatch software system, the worker was able to access those services from her home. In addition, the worker provided her services on a continuous basis throughout the time period involved. 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.

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. 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. The worker received a monthly rate of pay and had no other economic risk. 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.

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. There were no benefits and there was no written agreement. The worker was engaged as a dispatcher locating transportation jobs and forwarding the arrangements/information to the firm. When doing so, the worker was not engaged in an separate business venture. Instead, her services were essential to the firm's continuing operations. 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.

The firm indicated that both parties agreed to the independent contractor relationship. However, in *Bartels v. Birmingham*, 332 U.S. 126, 1947-2 C. B. 174, the Supreme Court stated that whether there is an employment relationship is a question of fact and not subject to negotiation between the parties.

The worker worked for the firm on a part-time basis, and therefore, understandably, could work for others. If a worker performs more than de minimis services for a multiple of unrelated persons or firms at the same time, that factor generally indicates that the worker is an independent contractor. See Rev. Rul. 70-572, 1970-2 C.B. 221. However, it is possible for a person to work for a number of people or firms concurrently and be an employee of one or all of them. From information provided, the firm had indicated that it wanted confirmation from the worker that she had terminated her dispatch services for another entity, presumably, so there would be no conflict as to who would receive the transportation jobs located.

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 see Publication 4341 for guidance and instructions for firm compliance.