

SS-8 Determination—Determination for Public Inspection

Occupation

02COO Coordinators

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 Parish Coordinator in tax year 2016, for which she received Form 1099-MISC. In a subsequent conversation, the worker acknowledged the relationship, which began in 2011, continues and that there have been no significant changes to the work relationship. The firm's business is described as spiritual fitness through rites, practices and programs, advising senior managers on the moral and spiritual needs of assigned personnel and ensuring all Airmen, their dependents and civil service employees enjoy the opportunities to exercise their religion. The worker's duties include, but are not limited to the following: scheduling the building for outside groups; coordinating food for General Fund events; answering chapel phone as needed; coordinating social activities and fellowship for unity services; act as a liaison for retiree events, pre-deployment marriages seminars; assist Parish Coordinators and lay leaders in recruiting volunteers to be used in specific activities; ensure that volunteers receive recognition and support for their work and keep proper records of attendance, volunteer worker's time and financial expenditures, and organize an annual Volunteer Appreciation Dinner; and, assist chapel personnel in planning/ coordinating of chapel social events and other such activities.

The firm's response was signed by the Accounting Operations Supervisor. The firm's business is described as an instrument of the US Government; however, it is not a government entity. The firm supports the moral and spiritual needs of US Air Force members around the world. Funds are received by free-will offerings collected at worship services. The worker provides services as a parish coordinator, in this capacity, she coordinates parish activities for the Protestant community at a particular Air Force base.

The worker indicated she was provided with specific training and instructions to unique and common software programs and cyber-security training to access electronic network resources. The job assignments are determined by and directed by the wing Chaplain, Protestant Chaplain, and/or Chapel military/civilian support staff. The firm determines the methods by which the worker's services are performed; any problems or complaints encountered by the worker are directed to the firm for resolution. She renders her services Monday through Friday between 10 am to 4:30 pm as well as an occasional evening and/or special event. The worker is required to perform the services personally; any additional personnel are hired and paid by the firm.

The firm response indicates no specific training and/or instruction was given. The job assignments are determined by the leadership team at the Chapel. It is the Contracting Officer representative that determines the methods by which the worker's services are performed. Any problems or complaints encountered by the worker are directed to the Contracting Officer representative for resolution. The worker's services are rendered at the chapel. The worker is required to perform the services personally. The worker would be required to obtain the approval of the Contracting Officer representative as to the hiring of any substitute or helper.

The firm and worker concur the firm provided office space, desk, computer, phone and email and Internet access. The worker furnishes a cell phone and her vehicle. The worker does not lease equipment, space, or a facility. The worker is either reimbursed or advanced funds as needed for the programs she supports. The worker is paid an hourly wage; customers pay the firm. The worker is not covered under the firm's workers' compensation insurance policy. The worker responded that she is at for a financial loss in this work relationship if there are damages to equipment due to negligence. The firm indicated the worker's financial risk is her responsibility for her own medical and unemployment.

The are no benefits extended to the worker. Either party could terminate the work relationship without incurring a liability or penalty. The worker is not providing same or similar services to others. The worker serves a parish coordinator.

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.

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 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. The worker is not operating a separate and distinct business; the worker does 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.