

SS-8 Determination—Determination for Public Inspection

Occupation

03TRA Tradespersons

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**

Information provided indicated the firm is a laundry company that provides drop off services for customers and private industry. It also has an in store coin operated washer and dryers. The worker provided services as a Laundromat Specialist for tax years 2014 through 2018. The firm provided a copy of the contract. The firm reported the income on [REDACTED] at year end, stating they were independent contractors as they had the liberty to schedule their own hours, that covered a minimum of fifteen hours of services. The firm stated they were contracted by services for [REDACTED] for a year contract. The firm indicated guidance was given how to operate the coin operated Laundromat. All work was performed on the firm premises. The worker was required to perform services personally. Management hired and paid all workers. The firm indicated they provided all equipment and supplies. The worker did not lease equipment, space or the facility. The customer paid the firm. Either party could terminate the work relationship without incurring a penalty or liability. The worker was represented as a laundry specialist of the firm. The firm indicated the worker ended the contract.

The worker indicated he completed a job application to obtain the job. The worker indicated he was required to punch in and out each work day, he was given a fixed work schedule. He was required to document his duties and services for each client, he was responsible for the collection and delivery of commercial accounts, he received payments and invoiced products, performed inventory and cleaned. The worker indicated he was given training and instructions of the job. Work assignments were given from a supervisor of the firm. The worker indicated services were performed four days a week for six hours per day. Staff meetings were held once a month, if the worker did not attend he would be fired. He was required to perform his services personally. The worker agreed the firm hired and paid all workers. The worker agreed the firm provided all equipment and supplies. The worker indicated he was paid on salary. Either party can terminate the work relationship without incurring a penalty or liability. The worker was represented as an employee of the firm. The worker indicated he received a letter of dismissal. The worker provided copies of her pay stubs that shows the hours worked, rate of pay, gross pay, Social Security and Medicare withholdings, and net pay. The worker provided a memo to all "employee" pertaining to the new procedures for requesting time off.

Analysis

The question of whether an individual is an independent contractor or an employee is one that is determined through consideration of the facts of a particular case along with the application of law and regulations for worker classification issues, known as “common law.” Common law flows chiefly from court decisions and is a major part of the justice system of the United States. Under the common law, the treatment of a worker as an independent contractor or an employee originates from the legal definitions developed in the law and it depends on the payer’s right to direct and control the worker in the performance of his or her duties. Section 3121(d)(2) of the Code provides that the term “employee” means any individual defined as an employee by using the usual common law rules.

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.

Therefore, your 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 applied the above law to the information submitted. 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.

Evidence of control generally falls into three categories: behavioral control, financial control, and relationship of the parties, which are collectively referred to as the categories of evidence. In weighing the evidence, careful consideration has been given to the factors outlined below.

Factors that illustrate whether there is a right to control how a worker performs a task include training and instructions. In this case, you retained the right to change the worker’s methods and to direct the worker to the extent necessary to protect your financial investment.

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.

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. 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 your business. Both parties retained the right to terminate the work relationship at any time without incurring a liability.

CONCLUSION

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. Services were performed as trained and instructed by the firm. Services were performed under the firm's business name, as an employee of the firm. The worker was paid by the hour for the services performed, indicating no opportunity for profit or loss