

SS-8 Determination—Determination for Public Inspection

Occupation 03TRA Tradespersons	Determination: <input checked="" type="checkbox"/> Employee <input type="checkbox"/> Contractor
UILC	Third Party Communication: <input checked="" type="checkbox"/> None <input type="checkbox"/> 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 single member limited liability company that provides residential construction/remodeling for their customers. The worker was engaged by the firm to provide construction/laborer services. There was no written agreement between the two parties.

The worker stated he was given instructions on where to work and what services to perform. The worker received his assignments either by the phone or verbally on the job. The worker stated the firm determined how the assignments should be performed and the firm stated they agreed upon how the assignments should be performed. The worker relied upon the firm to resolve his problems and complaints. The worker performed his services at the customers' locations.

The firm provided the materials and large tools and equipment for the worker to perform his services. The worker provided his own personal hand tools. The worker did not incur any expenses in the performance of his duties. The worker was paid on an hourly rate. The customers paid the firm directly for the services they received. The worker could not suffer an economic loss or financial risk in the performance of his duties.

The worker did not receive any benefits. Either party could terminate the work relationship without incurring a liability. The worker stated he did not perform similar services for others. The worker was represented as a subcontractor for the firm. The firm terminated the worker's services.

Analysis

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.

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 the instant case, the worker performed laborer/construction services for the firm's construction business which demonstrated the worker's services were integrated into the firm's daily operations.

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. In the instant case, the worker was given his instructions on what services to perform and where to perform the services which demonstrated the firm was interested in the methods used and in the end result as an employer. This was further demonstrated by the fact the worker relied upon the firm to resolve his problems and complaints.

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. In the instant case, the firm set an hourly rate of pay to the worker which demonstrated financial control.

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. In the instant case, the worker could not suffer a significant loss as operating their own business as the firm provided the materials and large equipment and tools the worker needed to perform his services.

The worker was an employee according to common law. The information provided by both parties showed the worker received his daily instructions from the firm on where to perform his services and what services to perform as an employee. The fact the firm ultimately determined how the services should be performed showed control by the firm over the worker as an employee. The worker relied upon the firm as an employer to resolve his problems and complaints. Financial control by the firm setting the worker's hourly rate of pay. The fact the firm set the rate to charge the customers and was responsible to collect the amount they charged to their customers showed the firm had the potential to suffer a significant loss due to lack of payment by the customers. The worker did not have a significant investment in the performance of his duties as the firm provided the worker with the materials and large equipment the worker needed to perform his services. The fact the worker performed labor/construction services to the firm's customers for the firm's construction business demonstrated the worker's services were integrated into the firm's daily operations.

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 go to www.irs.gov for further information.

Firm: Publication 4341

Worker: Notice 989