

SS-8 Determination—Determination for Public Inspection

Occupation 04MAN Managers/Supervisors	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 worker submitted a request for a determination of worker status in regard to services performed for the payer from January 2014 to present (2018) as an office manager. The work done by the worker includes maintaining the operations and procedures for church business. The payer issued the worker Form 1099-MISC for 2014 - 2017. A copy of the 2018 tax reporting document was not provided for our review. The worker filed Form SS-8 as she believes she erroneously received Form 1099-MISC.

The payer's response states it is a church. The worker is engaged as a church secretary. She volunteered to assist when her successor left. The work done by the worker includes administrative support to the pastor, organizing the church calendar, receiving and handling information, documenting member records in the database, preparing and copying bulletins, and answering the phone. The worker is classified as an independent contractor as she sets her own schedule, carries out assignments in her own way, and states what she will or will not work on. She works three days per week and is paid an hourly rate of pay.

The payer stated it trained and/or instructed the worker on how to use its database software. General church guidelines provide work assignments. The worker determines the methods by which assignments are performed. Depending on the problem, the payer's officers and/or pastor are contacted and assume responsibility for resolution. Reports and meetings are not required. The worker used to do the minutes for quarterly meetings; however, she elected to stop doing them. There was no penalty for her doing so. The worker sets her own work schedule which is typically three days per week, ranging from 1 to 12 hours per week. Services are performed at the church's location. The payer requires the worker to personally perform services. The worker stated church officials determine the methods by which assignments are performed. Church officials, trustee, or the pastor are contacted and assume responsibility for problem resolution. Meetings are optional.

The payer stated it provides a computer, copier, phone, supplies, and materials. The worker does not lease equipment, space, or a facility. It is unknown if the worker incurs expenses in the performance of services for the payer. The payer pays the worker an hourly rate of pay; a drawing account for advances is not allowed. The payer carries workers' compensation insurance on the worker. The worker does not incur economic loss or financial risk. The payer establishes the level of payment for the services provided. The worker stated she does not incur expenses in the performance of services for the payer.

The payer stated the work relationship can be terminated by either party without incurring liability or penalty. The worker does not perform similar services for others. It is unknown if the worker advertises. There is no agreement prohibiting competition between the parties. Finished products are returned to the church. The worker stated she does not advertise.

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.

Section 31.3121(d)-1(a)(3) of the regulations provides that if the relationship of an employer and employee exists, the designation or description of the parties as anything other than that of employer and employee is immaterial. Thus, if an employer-employee relationship exists, any contractual designation of the employee as a partner, coadventurer, agent, or independent contractor must be disregarded.

Therefore, a statement that a worker is an independent contractor pursuant to a written or verbal 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. Furthermore, whether there is an employment relationship is a question of fact and not subject to negotiation between the parties.

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 this case, the payer requires the worker to personally perform services. Furthermore, the services performed by the worker are integral to the payer's church mission. The payer provides work assignments by virtue of the parishioners served and assumes responsibility for problem resolution. These facts evidence the payer retains the right to direct and control the worker to the extent necessary to ensure satisfactory job performance in a manner acceptable to the payer. Based on the worker's education, past work experience, and work ethic the payer may not have to frequently exercise its right to direct and control the worker; however, the facts evidence the payer retains the right to do so if needed.

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 payer 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 payer 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. In this case, the worker has not invested capital or assumed business risks. 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. As acknowledged by the payer, the worker does not incur economic loss or financial risk. Based on the hourly rate of pay arrangement the worker cannot realize a profit or incur a loss.

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 is not engaged in an independent enterprise, but rather the services performed by the worker are a necessary and integral part of the payer's business. Both parties retain the right to terminate the work relationship at any time without incurring a liability. There is no evidence to suggest the worker performs similar services for others as an independent contractor or advertises business services to the general public. The classification of a worker as an independent contractor should not be based primarily on the fact that a worker's services may be used on a temporary, part-time, or as-needed basis. As noted above, common law factors are considered when examining the worker classification issue.

Based on the above analysis, we conclude that the payer 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.

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