

SS-8 Determination—Determination for Public Inspection

Occupation

02SAL Insurance Sales

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**

he firm requested a determination of a worker's status for Federal income tax and Employment tax purposes to confirm if worker's request to be classified as an Independent Contractor is allowed. The firm is a insurance sales business and the worker a sales agent selling PRF insurance products to customers. The firm paid the worker as an employee in 2017. The work relationship has not ended and other agents are paid as independent contractors per the firm. The changes would involve the worker not being responsible for new agent training or development.

The firm provides no training and does not assign worker jobs to perform. The firm owners determine the methods to use by the worker to perform the services. The firm requires the worker to contact the firm regarding problems or complaints for resolution. The firm requires the worker to provide the firm with expense reports. The firm allows the worker to determine the work schedule. The worker performs services at customers locations and other locations. The firm requires the worker to perform the services personally. The firm hires and pays substitutes or helpers if needed.

The firm provides materials, supplies, convention giveaways, hats, and shirts and worker provides a laptop. The worker does not lease equipment. The worker incurs expenses for travel. The firm pays the worker on a commission basis, no drawing accounts are allowed. The customers pay the firm. The insurance company determines the level of payment for products and services.

There are no contracts between the firm and worker. The worker does not perform similar services for others. They disagreed on if the worker advertises as a business to the public. The firm refers to the worker as a agent under the firm's business name, a trusted risk advisor and director of Account Relations. Per the worker the relationship can not be terminated at any time without incurring any liability and the firm did not answer this question. No documentation was provided by either the firm or worker regarding any part of job being performed by the worker.

Per the firm the worker solicits interested prospects by providing presentations. The worker is required to obtain the firm's prior approval on orders. The worker sells PRF insurance agreements at businesses and residential locations.

Analysis

When a firm directly or indirectly determines what, how, when, and where worker's perform services an employer/employee working relationship is established. In this case the firm owners determine the methods the worker uses to perform services. The firm determines the worker's job requirements and indicates a change with regard to training and development of other agents being done. The firm requires the worker to contact the firm regarding problems or complaints for resolution. The firm requires the worker to provide the firm with expense reports and signed policy contracts. The firm allows the worker to determine the work schedule based on prospecting activities scheduled at potential customer locations. The firm requires the worker to perform the services personally at the customers locations, home, or in motels. The firm hires and pays substitutes or helpers (agents) if needed. The worker has hired a assistant per the worker and the worker pays the assistant. These facts evidence behavioral control by the firm over the services being performed by the worker.

The firm provides the worker with materials, convention giveaways, hats, and shirts. The worker provides a laptop. The worker does not lease equipment or space. The worker incurs travel expenses and the firm reimburses some travel expenses. The firm pays the worker on a commission basis, no drawing accounts are allowed. The customers pay the firm. The firm determines the level of payment for products and services. The worker's economic loss and financial risks are related to commissions earned. The worker did not have control over profits made nor the risk of loss. The opportunity for higher earnings or of gain or loss from a commission arrangement is not considered control over profit or loss in the operation of a business. These facts evidence financial control by the firm over the services the worker is performing.

There are no contracts or agreements between the firm and the worker. The worker does not perform similar services for others or advertise as a business to the public. The worker personally performs services for the firm's business under the firm's business name as an agent on a regular and continuous flexible schedule. There are no agreements showing liabilities may be involved on the parties for termination of the working relationship. The firm has paid the worker as an employee for these services. The only change in the working relationship proposed for a reclassification of the workers status was with regard to training and development of sales agents by the worker.

Based on the prior classification of the worker as an employee as well as the firm's continuous control over the methods and means used by the worker to perform the services for the firm's business under the firm's business name, policies and procedures it is evident the worker was and is an employee under common law.