

SS-8 Determination—Determination for Public Inspection

Occupation

01FMW Timber Surveyor

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 firm provides property data services for customers. The firm engaged the worker through a referral to perform data collection services as needed for the firm's customers. The firm stated a verbal working relationship agreement was entered into that the worker would be a contractor responsible for his taxes on the payments for services. The worker received on the job training by shadowing another worker who was performing these services. The worker was assigned jobs by the firm through the other worker. The firm and firm's customer determined the methods used by the worker to perform the services. The firm required the worker to contact another contractor or the firm regarding resolution to any problems or complaints. The worker's daily schedules varied based on jobs. The worker was not required to perform the services personally per the firm and per the worker he was. The firm hired and paid substitutes or helpers if needed.

The firm provided all the equipment, materials, and supplied needed by the worker to perform the services. The worker provided nothing and did not lease anything or incur any significant on-going business expenses. The firm indicated the worker could not afford his own equipment so the firm allowed the worker to use the firm's equipment. The firm did not reimburse any expenses. The firm paid the worker on a production based basis and the customers paid the firm. The firm determined the level of payment for the services. The worker could not suffer any economic loss and had no financial risk with regard to performance of the services.

There were no written contracts and the firm did not provide any benefits. The worker did not perform similar services for others. The worker did not advertise as a business to the public. The firm referred to the worker as a contractor to the customers by name. Both parties retained the right to terminate the working relationship at any time without incurring any liability.

Analysis

When a firm determines or retains the right to determine directly or through designation what, how, when, and where workers perform services an employer/employee relationship exists. For federal employment tax purposes, it is not necessary for firms to exert direct or continuous control nor that services be performed full-time on a fixed scheduled basis, it is sufficient that the firm retains the right to change the workers services, as they deem necessary for business purposes. This control may come from verbal instructions, training, meetings, reporting, as well as supervision. Also, the methods used by workers to perform services are not only controlled through verbal instructions but also by equipment, materials, and supplies provided. In this case, the firm not the worker had control over the methods and means used in the performance of the services. These facts evidence behavioral control by the firm over the services performed by the worker.

When a worker does not have a significant financial investment in a business requiring on-going business capital outlays with business risk an employer/employee relationship is evident. In this case, the worker had no financial investment in a business and did not incur any significant on-going business expenses. The firm had the business investment and control over profit and risk of loss with regard to the services the worker performed for the firm's business. The firm paid the worker on a job incentive basis and the customers paid the firm for the services. The firm determined the level of payment for the services. The opportunity for higher earnings or of gain or loss from a commission arrangement is not considered profit or loss. These facts evidence financial control by the firm over the services performed by the worker.

There were no contracts between the firm and the worker. There was a verbal working relationship agreement that the worker was an independent contractor. It is noted that whether there is an employment relationship is a question of fact based on the autonomy of the work relationship and is not subject to negotiation between the parties. The worker did not perform similar services for others or advertise to the public as being engaged in a business. The worker personally performed services as needed under the firm's business name using the firm's equipment on a regular and continuous basis. Both parties retained the right to terminate the working relationship at any time without incurring any liability for termination. The right to discharge a worker at any time without incurring a liability for termination is a factor indicating that the worker is an employee and the person possessing the right is an employer. An employer exercises control through the threat of dismissal, which causes the worker to obey the employer's instructions. An independent contractor, on the other hand, cannot be fired without a liability so long as the independent contractor produces a result that meets the contract specifications. Likewise, if the worker has the right to end his or her relationship with the person for whom the services are performed at any time he or she wishes without incurring liability, that factor indicates an employer-employee relationship.

We have determined the worker to have been an employee under common law with regard to the services performed for the firm.