

SS-8 Determination—Determination for Public Inspection

Occupation

02AAD Designer

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**

Both parties agreed that the worker received no training, however both parties concurred that the worker received instructions from the firm. Additionally, the worker added these instructions included when and where to work what deliverables were expected and what software was to be used. The parties agreed that these work assignments came from the Director of Community Strategy, the worker referred to this party as their manager. The parties gave conflicting responses on who determined the methods in which these assignments were performed, the firm responded the worker determined the methods, while the worker stated it was their manager and themselves. If a problem or complaint were to arise, the parties agreed the worker was to contact the manager for resolution. No reports were required by the worker, however the worker stated she gave her manager verbal reports weekly. The worker's daily routine consisted of working 20 hours a week Monday through Wednesday. The parties agreed that these services were performed 90-95 % of the time at the firm's premises and 10% at the workers home, additionally the worker stated she always asked for approval before working from home. The worker stated she was not required to attend any meetings, the firm agreed with this but added the worker did attend meetings on a "as needed basis with her leadership. The worker performed these services personally. The worker stated if substitutes of helpers were needed, it was the firm's responsibility to hire and pay them. The parties agreed that the firm provided the office space, a desk and chair and some office supplies, additionally the parties agree that the worker provided a laptop, the worker also responded that she used her own software. The worker stated her expenses were for transportation and the cost of the software used and these expenses were not reimbursed by the firm. The parties agreed that the worker was paid by the hour and was not allowed a drawing account. Both parties responded that the customer's paid the firm and the firm established the level of payment for the services provided. The worker stated it was unknown of any economic loss or financial risk that can occur in services provided to the firm. The worker stated no benefits were available to her. The parties agreed that the work relationship could be terminated without incurring a liability or penalty. The worker stated she was performing similar services for others during the same time, the firm responded that this was unknown. The worker stated she did not advertise for the firm, the firm responded that this was unknown. The worker would return any finished product to the firm. The worker stated she was represented as a Contractor to the firms' customers. The parties differed on how the work relationship ended, the firm stated her contract ended, while the worker stated she quit due to being offered another job.

Analysis

Often because of the nature of the occupation it is not necessary that the worker receive extensive training, instructions or close supervision, the control factor is present if the person or persons for whom the services are performed retain the right to do so. Although the worker may not have been supervised directly while performing his services, this is not enough to characterize his relationship as a contract worker. The worker performed personal services on a continuous basis. The firm provided all significant materials to the worker. Thus, she did not have a have significant financial investment in the firm's materials. The worker was paid an hourly wage. The above facts do not reflect a business presence for the worker, but rather, strongly reflect the payer's control over the worker's services and the worker's integration into the payer's business.

The fact that the worker was not closely monitored would not carry enough weight to reflect a business presence for the worker. In fact, many individuals are hired due to their expertise or conscientious work habits and close supervision is often not necessary. Usually, independent contractors advertise their services and incur expenses for doing so. In this case, the worker did not advertise his services. This is a strong indicator that the worker is not an independent contractor. The firm provided a copy of a contractor agreement believing that this should be a clear indication that the worker agreed that she was a contractor. However, Federal guidelines stipulate that this agreement in of itself cannot be considered in the SS-8 determination process, as we are obligated to base our decisions on the actual relationship between the parties, which is the controlling factor, and not the terms of the contract either oral or written. Based on the common-law principles, the firm had the right to direct and control the worker. The worker shall be found to be an employee for Federal tax purposes. The firm did have the right to direct and control the worker.