

SS-8 Determination—Determination for Public Inspection

Occupation 02CON Consultants	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 corporation in the business to provide their customers with a database for highly efficient executives. The worker was engaged by the firm to research and find these professional executives to be added to the firm's database. The worker was required to fill out an application for the position.

The worker received orientation and training on the firm's database on how to provide the services. The worker received his assignments from the firm. The firm stated they give the worker insight on how to perform the service but the method is determined by the worker but the worker state the method is determined by the firm. The worker relied upon the firm to resolve problems and complaints. The worker had a supervisor. The worker was required to enter the data he found on the firm's system. The worker stated they were required to perform 4 10 hr. days and the firm stated the worker set their own schedule. The worker provided the service both at the firm's location and from home. The firm stated the worker was required to perform his services personally.

The firm provided the location and the firm's database. The worker stated he was paid hourly and the firm stated the worker received both hourly pay and piece work pay. The customers paid the firm for the service they received. The firm established the level of payment for the services provided.

The worker received no benefits. Either party could terminate the relationship without incurring a liability. The worker did not perform similar services for others. The worker stated his hours and pay were cut so he ended his services.

The firm's owner is an entrepreneur who had difficulty in finding the right executives to build and scale his companies, so he created this company for his clients to research top executives that would meet the client's needs. The executives are categorized according to their abilities and this makes it easier for the firm's clients to research according to their needs.

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.

The statement that the worker was an independent contractor pursuant to a verbal 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.

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 researched executives to be added to the firm's database. The worker's services were integrated into the firm's daily operations of providing their clients with a database clientele according to the needs of the firm's clients.

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 went through an orientation process and was trained by a supervisor on the firm's database system which showed control over the worker. This was further demonstrated by the fact the worker was required to perform his services personally which showed the firm was interested in the methods used as well as the end result as an employer.

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 worker was paid by the hour and then was paid on a piecework system which showed control over the worker financially. It was the firm that had the financial risk as it was the firm's responsibility to collect the amount they charge to their customers.

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. The firm provided the worker with an office and their database for the worker to enter his research results.

The worker was an employee according to common law. Control over the worker was shown by the fact the worker had a supervisor, went through an orientation and was trained by the firm on the firm's database. The fact the worker was required to perform the services personally demonstrated the firm was interested in the methods used as well as the end results. The firm had the financial investment because they consumed the financial burden of providing an office, the database, and a supervisor to the worker as an employer. The fact the worker performed the research service for clients to be added to the firm's database this 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