

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 full service environmental and Geo-science services as a consulting firm. The firm engaged the worker as a consultant to prepare a Phase 1 Environmental Site Assessment. There was no written agreement between the two parties.

The firm stated they did not give training or any instructions for the worker in the performance of his services. The worker stated the firm only gave him the due date for the report. The worker stated his assignments followed American Society for Testing and Materials (ASTM) regulations. The worker did rely upon the firm to resolve his problems and complaints. The worker was required to submit Phase 1 Environmental Site Assessment Reports. The worker established his own hours. The worker performed the majority of his services at the firm's location and some services at the customer's location. The worker was not required to attend any meetings. The worker was required to perform his services personally.

The worker stated the firm did not provide him with anything to perform his services and the firm stated they gave the worker a digital document. The worker stated he was reimbursed mileage, car rental, copying fees. The worker stated he was paid by the hour and the firm stated they paid the worker a lump sum. The customers paid the firm for the services they received. The worker stated he established his own level of payment for the services performed. The firm stated they established the level of payment for the services performed.

The worker didn't receive any benefits. Either party could terminate the work relationship without incurring a liability. The worker stated he did perform similar services for others at the same time he performed services for the firm. The worker is represented as a contractor. The firm stated the work relationship ended as the job was completed and the worker stated he still performs services for the firm on an as-needed basis.

The firm provided a copy of a notarized letter from the worker stating he worked as an independent contractor for the firm from October 23, 2017 to October 28, 2017.

The summary provided by the firm included the following:

- This showed the agree was between the firm and their client.
- It stated the firm's staff reviewed the historical use records for the site
- The report had been prepared by the staff of the firm's under the professional supervision of the principal and/or senior staff whose signatures appear on the report
- Federal and State environmental regulatory records were reviewed by representatives of the firm
- Interviews performed for all businesses listed the worker as the interviewer
- It stated the Findings and Conclusions were done by the firm
- Recommendations came from the firm
- The worker's invoices included the mileage, scanning and a price to make copies the worker incurred to perform his services

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. In the instant case, the firm did provide us with a copy of a notarized letter where the worker stated he was an independent contractor; however, our office is required to look at the entire work relationship between the two parties involved in the work relationship.

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, in the instant case the firm prepared a report for the firm's customer and the firm represented the worker as part of their staff in that report which demonstrated the worker's services were integrated into the firm's daily operations.

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 was required to perform his services personally. This was further demonstrated since the firm engaged the worker according to his qualifications for the position and did not require daily supervision as he could perform this service according to those qualifications.

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 on an hourly rate and was reimbursed all work related expenses i.e. mileage, coping and scanning expenses.

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 information provided by both parties showed the worker was an employee according to common law. The worker was represented as part of the firm's staff who signed the final summary to the client which demonstrated the worker's services were integrated into the firm's daily operations. Financial control was demonstrated by the firm setting an hourly rate of pay to the worker and then reimbursed the worker for work related expenses. The fact the worker relied upon the Senior Project Specialist to resolve his problems and complaints demonstrated the worker was dependent upon the firm as an employer to resolve his issues. The worker was hired by the firm according to his qualifications so the worker was qualified to perform his services and did not require day to day supervision which is a common practice in this industry. The fact the worker was required to perform his services personally demonstrated the firm was interested in the methods used as well as the end result as an employer.

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