

SS-8 Determination—Determination for Public Inspection

Occupation 02COO Coordinators	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 medical device design business. The firm initially engaged the worker to perform services as a staff coordinator, on a part-time contractor status, for one month from September 15 to October 21, 2017. The firm then engaged the worker to perform services as a project coordinator, on a part-time contracted basis, from November 1 to November 20, 2017, with an option to renew. The firm treated the worker status as independent contractor for both services, and issued to the worker one Form 1099-MISC at year-end to report all monies received for services performed as non-employee compensation.

The worker received the firm's regular business introduction and training. Work assignments were received from the firm via email, phone, and Messenger. The firm's CEO determined the work methods to be used to perform the services. Work related issues were reported to the firm's CEO and engineers for resolution purposes. The worker was required to provide the firm with invoices, marketing/analytics reports, and other daily operations reports. The firm required the worker to perform her services personally, and the worker's services were performed at the firm's office, and from her residence. The worker was required to attend weekly staff meetings.

The firm provided the worker with the email accounts, third party management system memberships, and credit cards needed to perform the services. There was no information provided in this case to support that the worker provided any items needed to perform the services, or that she incurred work related expenses. The firm paid the worker an hourly wage basis, as set by the firm. There was no information provided in this case to support that the worker incurred economic loss or financial risk related to the services she performed for the firm.

The firm did not cover the worker under workers' compensation insurance. No information was provided in this case to support that employment benefits were made available to worker. The worker did not perform similar services for others. The work relationship could have been terminated by either party at any time without incurring liabilities.

Analysis

The facts provided for this case do not evidence the worker's behavioral control of the work relationship. The worker followed the firm's instructions, training, work methods, schedule, and routine in the performance of her services. The worker's services were performed personally, at locations approved by the firm. The worker used the firm's facilities, equipment, tools and supplies, and represented the firm's business operations in the performance of her services. As a result, the firm retained the right to direct and control the worker to the extent necessary to protect its investment, and the reputation of its business operations.

The facts provided for this case do not evidence the worker's financial control of the work relationship. The worker's remuneration was established by the firm. The worker had no opportunity for profit or loss as a result of the services performed for the firm. "Profit or loss" implies the use of capital by a person in an independent business of his or her own. The worker did not have a significant investment in the facilities, equipment, tools, or supplies used to perform her services for the firm. 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. Also, if the firm has the right to control the equipment, it is unlikely the worker had an investment in facilities.

The worker performed services as requested by the firm, for an indefinite period of time, and both parties retained the right to terminate the work relationship at any time without incurring liabilities. The facts provided for this case do not evidence that the worker was engaged in an independent enterprise, but rather show that she performed her services as a necessary and integral part of the firm's business operations. 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.

Based on common law principles, the worker shall be found to be an employee for Federal employment tax purposes. For correction assistance, you may refer to Publication 4341, which can be obtained at www.irs.gov