

SS-8 Determination—Determination for Public Inspection

Occupation

02CSP Business/Computer Services/Office/Sales

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 is a computer website, application, and software construction business. The firm engaged the worker through a application process to provide front end computer consulting services on building computer programs for the firm's business for a period of about 3 months unless extended under a written agreement. The firm provided the worker with business practices and procedures training. The firm's assigned project managers assigned the worker jobs to perform. The methods used by the worker are determined by technical necessity issues. The worker is required to contact the firm's designated management regarding resolution of problems or complaints. Work reports on services performed and time spent performing services were required by the firm. The worker performed services during an established schedule at the firm's place of business. The firm required the worker to attend meetings. The firm required the worker to perform the services personally. The firm hired and paid substitutes or helpers if needed.

The firm provided everything the worker needed to perform the services. The worker did not lease equipment or space. The worker did not incur any business expenses. The contract indicated the firm would reimburse all approved and reasonable business expenses. The firm paid the worker an agreed upon hourly wage and the customers paid the firm. The firm did not carry workers' compensation insurance. The worker could not suffer any economic loss and had no financial risk.

There was a consulting contract, non-disclosure, and non-compete agreement entered into for about 3 months duration. The contract indicated it could be extended in writing between the parties however no additional extension was provided and the worker continued working beyond the three month time frame. The firm did not provide any benefits. The working relationship could be terminated at any time between the firm and worker without incurring any liability. The worker did not perform similar services for others while performing services for the firm. The firm terminated the working relationship.

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. In this case the firm engaged the worker through an application process to perform services that were directly related and necessary in the firm's business. The firm provided the worker with the necessary training on business practices and procedures. The firm assigned the worker to the firm's management to receive assignments and resolve problems or complaints if necessary. The firm required the worker to provide the firm with job and time reports, to attend meetings and to perform services personally at the firm's place of business during established business hours of operation. 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 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 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 provided everything the worker needed in order to perform the services. The worker did not incur any business expenses. The firm reimburse all approved and reasonable business expenses. The firm paid the worker an agreed upon hourly wage. The firm's customers paid the firm. The firm controlled the level of payment for the products and services. The worker could not suffer any economic loss and had no financial risk with regard to the services performed. These facts evidence financial control by the firm over the services performed by the worker.

There was a signed consulting contract between the firm and the worker for a period of about 3 months however the working relationship went beyond the 3 months time frame without any new agreement as indicated in the signed consulting contract. The worker did not perform similar services for others while performing services for the firm. The worker did not advertise to the public as being engaged in a business. The worker personally performed services for the firm on a regular and continuous full time basis for about 6 months.

Both parties retained the right to terminate the working relationship at any time without incurring any liability. 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.