

SS-8 Determination—Determination for Public Inspection

Occupation 02CSP Computer Services Personnel	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 business development and marketing operation. The firm engaged the worker to perform marketing research on-line on potential customers. The worker performed the services from home using home office equipment, materials, and supplies. The firm provided access to business systems needed by the worker to perform the services for the firm's business. The firm provided the worker with initial system instructions on software used and assigned worker jobs to perform via phone or email. The firm and the worker determined the methods used to perform the services. The firm required the worker to provide the firm with excel spreadsheets occasionally and to meet deadlines. The worker determined the hours to perform services. If the worker hired and paid substitutes or helpers the firm's prior approval was not required and the firm would not reimburse the worker for any payment made to substitutes or helpers. The worker indicated all services were required to be performed personally and not applicable to hiring and paying substitutes or helpers questions.

The firm provided the worker with access to software, databases, and a telephone headset. The firm paid the worker \$100 per quarter for cell phone expenses. The worker provided personal home office equipment, materials, and supplies. The firm paid the worker a set amount every 2 weeks for 40 hours of work services plus incentives. The customers paid the firm. The worker's economic loss and financial risk were related to costs for services performed and generated revenue. The firm and worker determined the level of payment for the worker's services.

There were no written contracts provided but the firm indicated there was a working relationship agreement. The firm provided the worker with paid holiday and bonus benefits. The worker indicated no similar services were performed for others while the worker performed services for the firm. The firm indicated the firm's prior approval was not required for worker to perform similar services for others. The firm did not know if the worker advertised as a business to the public and the worker indicated not advertising at all. Both agreed the working relationship could be terminated at any time by either party without incurring any liability.

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. 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 significant on-going business capital outlays with business risk an employer/employee relationship is evident. In this case, the worker had no significant financial investment in a business and did not incur any significant on-going 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 issue that the worker had a flexible schedule and provided home office equipment would not be considered having a significant business investment or having control over the profit and loss with regard to the operation of a business. The customers paid the firm. The firm determined the level of payment the customers paid for the services. These facts evidence financial control by the firm over the services performed by the worker.

There were no contracts provided between the firm and the worker. The firm indicated there was a working relationship agreement. The worker did not perform similar services for others or advertise as a business to the public. The firm indicated they did not prohibit the worker from doing so or to obtain the firm's prior approval to do so. Although these could be important factors to consider in an independent contractor relationship, these factors alone would not make the worker to be an independent contractor. Many workers have more than one job at a time and may be an employee in one or all working relationships depending on the autonomy of each one. The worker personally performed services for the firm's business on a regular and continuous part-time basis over a period of several years under the firm's business name. The firm provided the worker with paid holiday benefits and bonus benefits. The firm provided the worker with a set amount per quarter to pay towards cell phone charges.

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.