

SS-8 Determination—Determination for Public Inspection

Occupation

02CSP Computer Services Personnel

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 an IT consulting and project development company that provides temporary IT staffing to its clients. The worker in this case was engaged to perform services as a Software Developer, to develop software and solutions for the firm's clients. The firm and worker entered into a Placement and Employment Agreement regarding the services to be performed. The agreement refers to the worker as both an employee, and as an independent contractor, and further states the worker was to be an employee of the firm during the contract period. The issued to the worker a Form 1099-MISC at year-end to report all of the monies received for his services as non-employee compensation.

The agreement states the worker was required to follow the firm's policies, procedures and rules in the performance of his services. The worker received Java training from the firm, and was instructed to perform all employee tasks given by the client. The firm's client determined the work methods by which to perform the services. The worker was required to contact the client's management regarding problems that needed resolution; Resolution was the responsibility of the client and the firm. The firm required the worker to perform his services personally. The worker was required to attend staff meetings, monthly meetings, team meetings, and on-on-one meetings.

The firm provided the worker with the laptop, monitor, ID badge, and supplies needed to perform the services. The worker incurred fuel expenses for travel to and from the work site. The firm paid the worker on an hourly wage basis for his services. Clients paid the firm for services rendered. There was no information provided to support that the worker incurred economic loss or financial risks related to the services he performed for the firm.

There was no information provided to support that the firm covered the worker under workers' compensation insurance. The firm made employment benefits (paid holidays) available to the worker. The worker did not perform similar services for others, nor did he advertise his services to the public while engaged by the firm. The work relationship could have been terminated by either party at any time without incurring liabilities.

Analysis

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

The facts provided for this case do not evidence the worker's behavioral control of the work relationship. The worker followed the firm's training, instructions, rules, procedures, and policies in the performance of his services. The worker performed his services personally at the firm's client location. The worker used equipment, tools, and supplies provided to him, and he represented the firm's business operations in the performance of his services. As a result, the firm retained the right to direct and control the worker to the extent necessary to protect its investment, its client relationships, 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 his 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 facts provided for this case do not evidence that the worker was engaged in an independent enterprise, but rather show that he performed his services as a necessary and integral part of the firm's business operations. The worker was to remain an employee of the firm for the duration of the firm's contract with its client. The firm and worker both retained the right to terminate the work relationship at any time without incurring liabilities. 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