

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 worker obtained the job by using [REDACTED]. The firm engaged the worker as an employee from 3/20/2018 until 10/13/2019.

Both parties agreed the worker did receive instruction from the firm. Both parties agreed the worker received instructions regarding the details of the services to be performed by the firm. There is a signed written agreement between the parties. Assignments were given 1-3 times a week, verbally or via chat message to the worker from the firm. The worker performed services on various days and at various times. The worker stated that the firm would require the worker to be available during normal business hours to respond to chat messages throughout the day. Services were performed at the worker's home. The firm did not have a business location to perform services at. Both parties agreed the firm was responsible for problem resolution. The worker was required to submit reports such as tickets created in [REDACTED] to show every task that was assigned to the worker, along with time sheets. The worker was required to attend quarterly meetings in person and weekly phone meetings 1-3 times a week. The relationship between the parties was continuous, as opposed to a one-time transaction. The nature of this relationship contemplated that the worker would perform the services personally. Services performed by the worker were an integral and necessary part of the services the firm provided to its customers. Both parties disagreed on who would have to approve and pay any substitute helpers hired to replace the worker.

Equipment needed to perform services was provided by the firm at no expense to the worker. The firm determined the fees to be charged. The firm's customers paid the firm. An hourly wage was paid to the worker. The worker did not incur any significant business expenses. The firm did not carry worker's compensation insurance on the worker. The firm would reimburse the worker for added expenses such as travel to and from meetings if in person meetings occurred twice in a week.

The worker was not eligible for sick pay, vacation pay, health insurance, or bonuses. Either party may terminate the worker's services at any time without incurring a penalty or liability. The worker was not a member of a union. The worker was required to upload worker resume so the firm's clients were able to view the professional engineering status to perform the services for the firm's clients. According to internal research, the worker did not perform services for others. No advertising was done by the worker for services performed. No office, shop, or other place of business was held by the worker to indicate a business presence. The relationship between the parties ended when the firm told the worker the contract was not being extended.

Analysis

The worker performed personal services on a continuous basis. Work was performed on the workers premises, on a regular schedule set by the firm. The firm did not have a business location for work to be performed. All significant materials were provided to the worker by the firm. The firm would reimburse the worker for added expenses such as travel, to and from meetings, if in person meetings occurred twice in a week. In person meetings were quarterly and phone meetings were held 1-3 times per week. The worker could not incur a business risk or loss. An hourly wage was paid to the worker. The worker did not hold the services out to the general-public. The customers paid the firm and although the firm stated the worker received an hourly wage and sometimes remuneration in the form of piecework the worker however maintains an hourly wage was paid.

The above facts do not reflect a business presence for the worker, but rather, strongly reflect the payer's control over the worker's services and the worker's integration into the payer's business. The fact that the worker was not closely monitored would not carry sufficient weight to reflect a business presence for the worker. In fact, many individuals are hired due to their expertise or conscientious work habits and close supervision is often not necessary. Usually, independent contractors advertise their services and incur expenses for doing so. In this case, these facts are strong indicators that the worker is not an independent contractor. Either party could terminate the relationship without incurring a penalty or liability; in fact, the relationship ended when the worker was told the firm was not extending the contract to the worker.

A Form W-9 was signed. A Form W-9 is an information form requesting taxpayer identification and certification. Therefore, this does not indicate the worker to be an independent employee.

Contractual designation of a worker as an independent contractor cannot outweigh evidence regarding the actual relationship between worker and taxpayer.

Based on the common-law principles, the firm had the right to direct and control the worker. The worker shall be found to be an employee for Federal tax purposes.